Chiptar Holdings Sdn Bhd v THC Rice (KL) Sdn Bhd (formerly known as Thai Hong Chan (KL) Sdn Bhd) & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCC-530–11 OF 2020
ONG CHEE KWAN J
1 MARCH 2023

Companies and Corporations — Oppression — Conduct amounting to oppression — Allotment of shares by directors to raise funds — Directors as minority shareholders bought allotted shares without knowledge of majority shareholders — Whether purpose of allotment of shares was to dilute shareholder's shareholding — Whether directors' exercise of power in allotting shares was carried out for proper purpose or otherwise — Companies Act 2016 s 346

The plaintiff was initially the majority shareholder of the first defendant but due to the rights issue carried out ('the first rights issue') by the second defendant and the third defendant as the directors of the first defendant, the second defendant had bought the allotted shares for RM18.5m and became the majority shareholder of the first defendant. The reasons behind the first rights issue were firstly, cash flow issues caused by the Covid-19 pandemic and secondly, the first defendant had received a demand from creditors. It ought to be noted that the plaintiff did not have any knowledge of this first rights issue. After the completion of the first rights issue, the monies paid by the second defendant to buy the allotted shares were almost immediately used by the first defendant to pay outstanding loan allegedly provided by the second defendant. Five months later, the directors of the first defendant wanted to raise funds for the expansion of the sugar and rice businesses of the first defendant and this was to be carried out via allotment of more shares of the first defendant ('the second rights issue'). In relation to this, the directors of the first defendant had relied on three accountant's reports authored by one Tan Weng Leng ('DW1') in support of their intention to exercise the second rights issue. The plaintiff then filed the present originating summons ('the OS') pursuant to s 346 of the Companies Act 2016 ('the CA') alleging oppression arising from the first rights issue and the second rights issue and on 27 January 2021, the plaintiff obtained an urgent interim injunction ('the first interim injunction') against the first defendant in respect of the second rights issue. Despite the existence of the first interim injunction, the directors of the first defendant again wanted to exercise another rights issue ('the third rights issue') but they did not proceed with such intention after the plaintiff protested it. There was then another attempt to exercise the rights issue ('the fourth rights issue') and this time around the purposes were firstly, to raise fund to pay the plaintiff's demand in Suit 364 against the first defendant and secondly to cover the costs of building new

A weighbridge. However, the fourth rights issue did not materialize after the court ordered another interim injunction against the exercise of the same. By this OS, it was the plaintiff's case that when the second, third and fourth defendants' actions were viewed in its entirety, it was clear that the affairs of the first defendant had been and continue to be managed in a manner that was B oppressive to the plaintiff's interest as a member of the first defendant. Essentially, this case discussed the issue of whether the directors' exercise of power in allotting shares was carried out for a proper purpose or otherwise.

C **Held:**

(1) It was an established legal principle that a director's use of powers to allot shares to destroy or to dilute a shareholder's shareholding in a company was an improper exercise of such powers. Further, a singular dilution of the shareholding of a shareholder in an unfair and egregious manner D could suffice as oppressive conduct if it showed a strong propensity or tendency to blatantly disregard or prejudice the interest of the said shareholder. In relation to the question of whether the allotment of shares was for an improper purpose, the test was an objective one (see paras 57, 61, 65 & 121).

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(2) No evidence had been adduced by the second and third defendants as the directors of the first defendant to demonstrate that the first defendant was indeed facing a cash flow crisis necessitating a need for the first rights issue to be undertaken. In fact, the RM18.5m that was paid into the first F defendant by the second defendant to subscribe for the shares pursuant to the first rights issue, was almost immediately used to pay the second defendant purportedly for outstanding director loan due from the first defendant to him. The court was of the view that the second defendant's action was a blatant and sneaky conduct designed to conceal the G proposed rights issue from the notice of the plaintiff and in a clandestine manner, diluted the plaintiff's shareholdings in the first defendant without even an attempt to disclose the same to the plaintiff. Therefore, on the basis of the first rights issue alone, the plaintiff had successfully established a case of oppressive conduct under s 346 of the CA (see H paras 75–76 & 123–124).

(3) In relation to the second rights issue, the first defendant had not demonstrated that it could not obtain the additional working capital (if indeed there was such a need) for its expansion plans from its financial institutions as an alternative to the rights issue. Further, based on DW1's I testimony, the effect of the first rights issue had resulted in a positive financial position for the first defendant which must meant that after the first rights issue, the first defendant would have been better placed to secure financing from the banks. Based on the above findings, the justifications offered by the directors of the first defendant for the second

rights issue had not been established at all. In fact, the second rights issue coming just less than six months after the first rights issue, was a continuing attempt by the second, third and fourth defendants to dilute the plaintiff's shareholdings (see paras 140–141 & 145).

(4) In the present case, the mechanism of rights issue was frivolously and intentionally resorted to by the second, third and fourth defendants more as an instrument to threaten the plaintiff with dilution of its shareholdings (given that the plaintiff was wound up) and not for any bona fide purpose. Their actions thus far proved a clear propensity and tendency to oppress the plaintiff as long as the plaintiff remained a shareholder of the first defendant. This was made abundantly clear when the second, third and fourth defendants insisted on proceeding with the fourth rights issue even after the plaintiff gave its undertaking not to enforce its judgment in Suit 364 and to permit the first defendant to continue using its weighbridge (see paras 164–165).

(5) Under s 346(2) of the CA, reliefs to the plaintiff ought to be granted on the basis that 'the Court may make such order as the Court thinks fit with the view to bringing to an end or remedying the matters complained of'. Any reliefs that were to be given was to be considered in the context of the reality and practicalities of the overall situation, past, present, and future. Given the current relationship of the parties, a clean break was required between the plaintiff and the defendants. Towards a clean break and given that the liquidator of the plaintiff had a duty to liquidate all its assets, it was best that the plaintiff was no longer a shareholder of the first defendant or connected to the first defendant any further. Accordingly, an order against the second, third and fourth defendants to purchase the plaintiff's shares in the first defendant at fair value was warranted (see paras 166, 169–171 & 175).

(6) The court was not inclined to include any premium in the valuation price for the plaintiff's shares in this case. This was because the remedy of a buyout by the minority from the majority in this case was an option expressly preferred by the plaintiff given the present status of the company which was in liquidation. Further, the alternative order requiring the plaintiff to purchase the minority shareholder's shares of the first defendant would effectively result in the winding up of the first defendant. Also, based on the facts of this case, to impose a premium on the valuation price on the minority may unnecessarily place too heavy a financial burden on the minority to purchase the majority's shares. In relation to the mode of valuation, given that the first defendant was still operating at a profit, the mode of valuation should be on a 'going concern' basis. In other words, it meant that the first defendant was valued on the assumption of its earnings in the years to come (see paras 179–181).

(7) It was not clear that in a case of oppression, the court had the power to order the payment of exemplary damages against the parties perpetrating the oppressive acts. However, there was no need for the court to make a determination on the same because the present case did not fall within the two categories in common law where exemplary damages may be awarded as enunciated in *Rookes v Barnard* [1964] 1 All ER 367 (see para 190).

[Bahasa Malaysia summary

Plaintif pada mulanya merupakan pemegang saham majoriti defendan pertama tetapi disebabkan terbitan hak yang dijalankan ('terbitan hak pertama') oleh defendan kedua dan defendan ketiga sebagai pengarah-pengarah defendan pertama, defendan kedua telah membeli hak saham yang diperuntukkan dengan bayaran sebanyak RM18.5 juta dan menjadi pemegang saham majoriti defendan pertama. Sebab-sebab disebalik terbitan hak pertama adalah pertama, isu aliran tunai yang disebabkan oleh pandemik Covid-19 dan kedua, defendan pertama telah menerima tuntutan daripada pemiutang-pemiutang. Perlu diingatkan bahawa plaintif tidak mempunyai pengetahuan tentang terbitan hak pertama ini. Selepas selesai terbitan hak pertama, wang yang dibayar oleh defendan kedua untuk membeli saham yang diperuntukkan hampir serta-merta digunakan oleh defendan pertama untuk membayar pinjaman tertunggak yang didakwa diberikan oleh defendan kedua. Lima bulan kemudian, pengarah-pengarah defendan pertama ingin mengumpul dana untuk pengembangan perniagaan gula dan beras defendan pertama dan ini akan dijalankan melalui peruntukan lebih banyak saham-saham defendan pertama ('terbitan hak kedua'). Berkaitan dengan ini, pengarah-pengarah defendan pertama telah bergantung kepada tiga laporan akauntan yang dibuat oleh seorang yang bernama Tan Weng Leng ('DW1') bagi menyokong hasrat mereka untuk melaksanakan terbitan hak kedua. Plaintif kemudiannya memfailkan saman pemula semasa ('SP') menurut s 346 Akta Syarikat 2016 ('AS') atas dakwaan penindasan yang timbul daripada terbitan hak pertama dan terbitan hak kedua dan pada 27 Januari 2021, plaintif memperoleh injunksi interim segera ('injunksi interim pertama') terhadap defendan pertama berkenaan dengan terbitan hak kedua. Walaupun terdapatnya injunksi interim pertama, pengarah-pengarah defendan pertama sekali lagi mahu melaksanakan satu lagi terbitan hak ('terbitan hak ketiga') tetapi mereka tidak meneruskan hasrat mereka selepas plaintif membantahnya. Kemudian terdapat satu lagi percubaan untuk melaksanakan terbitan hak ('terbitan hak keempat') dan kali ini tujuannya adalah pertama, untuk mengumpul dana untuk membayar tuntutan plaintif dalam Saman 364 terhadap defendan pertama dan tujuan kedua untuk menampung kos pembinaan jambatan timbang yang baharu. Bagaimanapun, terbitan hak keempat ini tidak menjadi kenyataan selepas mahkamah mengarahkan satu lagi injunksi interim terhadap pelaksanaan terbitan tersebut. Melalui SP ini, adalah menjadi kes plaintif bahawa apabila tindakan defendan kedua, ketiga

dan keempat dilihat secara keseluruhannya, adalah jelas bahawa hal ehwal defendan pertama telah dan terus diuruskan dengan cara yang menindas kepada kepentingan plaintif sebagai ahli defendan pertama. Pada asasnya, kes ini membincangkan isu sama ada penggunaan kuasa pengarah-pengarah dalam memperuntukkan saham telah dijalankan untuk tujuan yang sepatutnya atau sebaliknya.

Diputuskan:

(1) Ia merupakan prinsip undang-undang yang telah ditetapkan bahawa penggunaan kuasa pengarah untuk memperuntukkan saham bagi tujuan memusnahkan atau mencairkan pegangan saham pemegang saham dalam syarikat adalah satu pelaksanaan kuasa yang tidak wajar. Selanjutnya, pencairan tunggal pegangan saham pemegang saham dengan cara yang tidak adil dan teruk adalah memadai sebagai kelakuan yang menindas jika ia menunjukkan kecenderungan yang kuat atau tendensi untuk secara terang-terangan mengabaikan atau menjejaskan kepentingan pemegang saham tersebut. Berhubung dengan persoalan sama ada peruntukan saham adalah untuk tujuan yang tidak wajar, ujian yang terpakai adalah ujian objektif (lihat perenggan 57, 61, 65 & 121).

(2) Tiada keterangan telah dikemukakan oleh defendan kedua dan ketiga sebagai pengarah-penagarah defendan pertama yang menunjukkan bahawa defendan pertama sememangnya menghadapi krisis aliran tunai yang memerlukan terbitan hak pertama dijalankan. Malah, RM18.5 juta yang telah dibayar kepada defendan pertama oleh defendan kedua untuk melanggan saham menurut terbitan hak pertama, hampir serta-merta digunakan untuk membayar defendan kedua kononnya untuk pinjaman pengarah tertunggak yang terhutang daripada defendan pertama kepada defendan kedua. Mahkamah berpandangan bahawa tindakan defendan kedua adalah satu kelakuan terang-terangan dan licik yang direka untuk menyembunyikan cadangan terbitan hak tersebut daripada pengetahuan plaintif dan secara rahsia, mencairkan pegangan saham plaintif dalam defendan pertama tanpa apa-apa percubaan untuk mendedahkan perkara tersebut kepada plaintif. Oleh itu, berdasarkan terbitan hak pertama sahaja, plaintif telah berjaya membuktikan kes kelakuan menindas di bawah s 346 AS (lihat perenggan 75–76 & 123–124).

(3) Berhubung dengan terbitan hak kedua, defendan pertama tidak menunjukkan bahawa ia tidak boleh mendapatkan modal kerja tambahan (jika betul ada keperluan sedemikian) untuk rancangan pengembangannya daripada institusi kewangannya sebagai alternatif kepada terbitan hak tersebut. Selanjutnya, berdasarkan keterangan DW1, kesan terbitan hak pertama telah menghasilkan kedudukan kewangan yang positif bagi defendan pertama yang seharusnya bermaksud, selepas terbitan hak pertama, defendan pertama mempunyai

kedudukan yang lebih baik untuk mendapatkan pembiayaan daripada bank. Berdasarkan dapatan-dapatan di atas, justifikasi yang diberikan oleh pengarah-pengarah defendan pertama untuk terbitan hak kedua tidak dibuktikan sama sekali. Kenyataannya, terbitan hak kedua yang ingin dijalankan setelah hanya kurang daripada enam bulan selepas terbitan hak pertama dijalankan, merupakan percubaan berterusan oleh defendan kedua, ketiga dan keempat untuk mencairkan pegangan saham plaintif (lihat perenggan 140–141 & 145).

(4) Dalam kes ini, mekanisme terbitan hak telah secara remeh dan sengaja digunakan oleh defendan kedua, ketiga dan keempat lebih sebagai instrumen untuk mengancam plaintif dengan pencairan pegangan sahamnya (memandangkan plaintif telah digulung) dan bukan untuk apa-apa tujuan yang bona fide. Tindakan mereka setakat ini membuktikan kecenderungan dan tendensi yang jelas untuk menindas plaintif selagi mana plaintif kekal sebagai pemegang saham defendan pertama. Ini adalah jelas apabila defendan kedua, ketiga dan keempat berkeras untuk meneruskan terbitan hak keempat walaupun selepas plaintif memberi aku janji untuk tidak menguatkuasakan penghakimannya dalam Saman 364 dan membenarkan defendan pertama terus menggunakan jambatan timbangnya (lihat perenggan 164–165).

(5) Di bawah s 346(2) AS, relif-relif kepada plaintif hendaklah diberikan atas dasar bahawa 'the Court may make such order as the Court thinks fit with the view to bringing to an end or remedying the matters complained of'. Apa-apa relif yang akan diberikan hendaklah dipertimbangkan dalam konteks realiti dan kepraktisan keadaan keseluruhan, masa lalu, sekarang dan masa hadapan. Mengambil kira keadaan hubungan semasa pihak-pihak, pemisahan bersih diperlukan antara plaintif dan defendan-defendan. Untuk mendapatkan pemisahan bersih dan memandangkan pelikuidasi plaintif mempunyai kewajipan untuk mencairkan semua asetnya, adalah lebih baik untuk plaintif tidak lagi menjadi pemegang saham defendan pertama atau berhubungan lagi dengan defendan pertama. Sehubungan itu, perintah terhadap defendan kedua, ketiga dan keempat untuk membeli saham plaintif dalam defendan pertama pada nilai saksama adalah wajar (lihat perenggan 166, 169–171 & 175).

(6) Mahkamah tidak cenderung untuk memasukkan apa-apa premium dalam harga penilaian untuk saham plaintif dalam kes ini. Ini adalah kerana remedi pembelian oleh minoriti daripada majoriti dalam kes ini adalah pilihan yang jelas dimahukan oleh plaintif memandangkan status semasa syarikat tersebut yang dalam pembubaran. Selanjutnya, perintah alternatif yang menghendaki plaintif membeli saham pemegang saham minoriti defendan pertama secara kesannya akan mengakibatkan

penggulungan defendan pertama. Selain itu, berdasarkan fakta kes ini, untuk mengenakan premium pada harga penilaian ke atas minoriti akan meletakkan beban kewangan yang terlalu berat yang tidak perlu kepada minoriti untuk membeli saham majoriti. Berkaitan dengan cara penilaian, memandangkan defendan pertama masih beroperasi dalam keuntungan, cara penilaian tersebut hendaklah berasaskan 'going concern'. Dalam erti kata lain, ini bermakna defendan pertama dinilai berdasarkan andaian pendapatannya pada tahun-tahun akan datang (lihat perenggan 179–181).

(7) Adalah tidak jelas sama ada dalam kes penindasan, mahkamah mempunyai kuasa untuk memerintahkan pembayaran ganti rugi teladan terhadap pihak yang melakukan perbuatan menindas tersebut. Walau bagaimanapun, tidak ada keperluan untuk mahkamah membuat penentuan mengenai perkara tersebut kerana kes semasa tidak termasuk dalam dua kategori dalam undang-undang biasa di mana ganti rugi teladan boleh diberikan seperti yang dinyatakan dalam *Rookes v Barnard* [1964] 1 All ER 367 (lihat perenggan 190).]

Cases referred to

820099 Ontario Inc v Harold E Ballard Ltd [1991] OJ No 266 (refd)
Bird Precision Bellows, Re [1986] Ch 658, CA (refd)
Buckingham v Frances [1986] 2 All ER 738, QBD (refd)
CDH Invest NV v Petrotank South Africa (Pty) Ltd (483/2018) [2019] ZASCA 53, HC (refd)
CVC Demarco v Almeida [2002] BCC 684, PC (refd)
Cheyne v Alfred Cheyne Engineering Ltd [2021] CSOH 17 (refd)
Cumana Ltd, Re [1986] BCLC 430, CA (refd)
Dato' Shabaruddin bin Ibrahim v Dato' Ruslan bin Ali Omar & Ors [2020] MLJU 1744; [2021] 2 MLRH 1, HC (refd)
Elgindata Ltd (No 1), Re [1991] BCLC 959 (refd)
Grace v Biagioli [2005] EWCA Civ 1222, CA (folld)
Hailey Group Ltd, Re [1993] BCLC 459 (folld)
Howard Smith Ltd v Ampol Petroleum Ltd and others [1974] 1 All ER 1126, PC (distd)
Khong Kok Yun & 6 Ors v Ong Soon Kwee & 3 Ors (unreported) (refd)
London School of Electronics Ltd, Re [1986] Ch 211 (refd)
Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Corp (M) Bhd & Anor [2010] MLJU 269; [2010] 1 MLRA 761, FC (refd)
Rookes v Barnard [1964] 1 All ER 367 (distd)
Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal [2018] 2 MLJ 177, FC (refd)

Legislation referred to

Bankers' Books (Evidence) Act 1949 s 7
Companies Act 2016 ss 75, 346, 346(2)
Companies Act 1985 [UK] s 459

Nahendran Navaratnam (with Derrick Chan and Brandon Toh) (CK Chan Law Practice) for the plaintiff.
KF Ee (with Marcus Chong) (KF Ee & Co) for the defendants.

Ong Chee Kwan J:

INTRODUCTION

[1] As a general rule, the court will not interfere with the decision of directors of a company on the way they wish to conduct the business of the company. This is popularly known as the 'business judgment' rule. Thus, decisions made by directors proposing rights issue as a means to raise working capital for the company will fall within the business judgment rule.

[2] However, where the proposed rights issue is motivated not in the interest of the company but with the objective of diluting the shareholdings of the minority shareholder(s) or for other improper purpose, the court will intervene. Such a dilution can be the basis for an oppression claim.

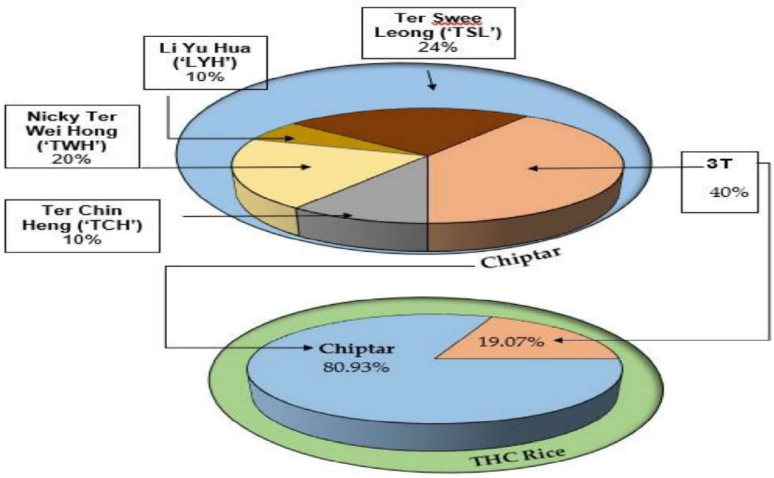
[3] This case involves an evaluation of the motivation behind four proposed rights issues and whether the said proposed rights issues or were in fact bona fide in the interest of the company or for a proper purpose.

[4] The facts in this case are unique in that the plaintiff, the alleged oppressed party, had held 80.93% of the shares in the first defendant and the second defendant, the alleged oppressor, had held only 19.07% of the shares but had full control of the management of the first defendant.

BACKGROUND FACTS

[5] The plaintiff ('Chiptar') and the second to fourth defendants ('TTT', 'CFH' and 'CNM' respectively) are the current shareholders of first defendant ('THC Rice').

[6] Chiptar was an 80.93% majority shareholder of THC Rice. The balance 19.07% was held by TTT. As an overview, the pie chart below is a visual depiction of the relationship between Chiptar, THC Rice and its respective shareholders:



[7] As can be seen from the foregoing, Chiptar and THC Rice are essentially family-owned companies ('the Ter family'). Both companies were founded and led by one Ter Swee Leong ('TSL), the patriarch of the Ter family. TSL passed away on 11 February 2020.

[8] During his lifetime, TSL was primarily assisted by TTT in terms of the day to day running of Chiptar and THC Rice. TSL reposed faith and confidence in TTT and would rely on him to faithfully translate and explain documents which needed to be executed.

[9] During TSILs lifetime, he allocated shares in Chiptar in such proportions as he deemed fit. This was to ensure that a representative from each of his marital unions had a direct interest in Chiptar. The respective representatives from each of TSL's unions are as follows:

(a) Ter Chin Heng ('TCH), the eldest son from TSL's first union with Chia Pek Lim;

(b) TTT, as the son of TSL's second union with the fourth defendant;

(c) Ter Wei Hong ('TWH'), TSL's son from his third union with Chan Yin Seng; and

(d) Li Yu Hua ('LYH'), TSL's fourth union.

[10] Prior to TSL's passing, all of the representatives from each of TSL's unions were made directors of Chiptar, save and except for TWH. Thus, the directors of Chiptar prior to TSL's passing were TSL, TTT, TCH and LYH. However, TCH and LYH played little roles in the management of Chiptar.

[11] As regards THC Rice, during TSL's lifetime, he was primarily assisted by TTT in the management and affairs of THC Rice. TTT was in turn assisted by CFH, his wife. Thus, prior to TSL's passing, the directors of THC Rice were TSL, TTT and CFH.

[12] At all material times, TSL remained in sole management control of both Chiptar and THC Rice and by reason of TSL's passing, the immediate management and affairs of Chiptar and THC Rice naturally devolved upon TTT.

[13] In this regard, TTT and, by extension, CFH were the only individuals that the remaining Chiptar directors, namely TCH and LYH could look to in order to be appraised of the management and affairs of Chiptar and THC Rice.

[14] With the passing of TSL, the shareholders of Chiptar quite naturally decided to take a more active participation in Chiptar. As such, a Chiptar's Board of Directors' meeting was held on 4 March 2020 ('the 4 March 2020 Chiptar's Board of Directors' meeting') wherein the following appointments were made:

(a) TWH as a director of Chiptar. TWH was the only shareholder who did not have any board representation at the time of TSL's passing;

(b) the appointment of the following individuals as alternate directors:

(i) Wendy as the alternate director for TCH;

(ii) Lim Suk Yee as the alternate director for TWH; and

(iii) Lee Saik Choo as the alternate director for LYH.

THE first rights issue

[15] Less than four months after's TSL demise, TTT and his wife, CFH (being the remaining directors of THC Rice), in reliance on their power as directors of THC Rice proceeded to authorise a rights issue of 8,750,000 shares valued at RM2.30 per share ('the first rights issue'). The exercise of such a power is conferred by s 75 of the Companies Act 2016 ('the CA 2016').

[16] The first rights issue was to be carried out on the basis that 3.5 shares were to be offered to Chiptar and TTT for every existing one share that was held. In this regard, the offers to subscribe to the rights issue were as follows:

	Shares existing before rights issue	Existing share proportion multiplied by	Shares offered for subscription
Chiptar	2,023,214	3.5	7,081,249
3T	476,478		1,668,751

[17] This first rights issue was structured as follows:

(a) Chiptar and TTT are to respond to the offer by 5pm on 18 June 2020; and

(b) in the event Chiptar or TTT declines the offer or any part thereof, the other party will have the right to purchase the shares that were declined.

[18] It is Chiptar's case that it did not have any *actual* notice of the first rights issue, in particular the letter of offer dated 2 June 2020 ('the 2 June 2020 letter of offer'). As a result, Chiptar was deemed to have declined the offer to subscribe to the 7,081,249 shares that were offered to it.

[19] On TTT's part, he subscribed to the purchase all of the 1,668,751 shares that were offered to him. In addition, he also purchased 6,374,727 out of the 7,081,249 shares that were declined, as a matter of default, by Chiptar. In total, THC Rice allotted 8,043,478 shares to TTT for the sum of RM18,499,999.40.

[20] Consequently, following from the first rights issue, Chiptar's shareholding in THC Rice was diluted down from 80.93% to a mere 19.19%. As for TTT, he became an 80.81% shareholder of THC Rice. This was a complete reversal of the original shareholdings of the company.

[21] TTT thereafter transferred 426,013 shares in THC Rice to CFH and 1 share to his mother, CNM. CNM was made a director of THC Rice on 22 June 2020.

[22] Chiptar claimed that it only came to know that its shareholding in THC Rice was diluted when TTT initiated proceedings vide Kuala Lumpur High Court Suit No WA-22NCC-256–06 of 2020 ('Suit 256') in June 2020, not long after the first rights issue.

[23] In Suit 256, TTT sought to challenge the appointments made at the 4 March 2020 Chiptar's Board of Directors' meeting. After filing the Suit 256, TTT filed an application for an urgent interim injunction against a proposed Chiptar Board of Directors' meeting that was scheduled on 26 June 2020. In TTT's affidavit in support towards the aforesaid injunction application, TTT

A exhibited a THC Rice company search dated 19 June 2020 indicating that TTT's shareholding has increased to 8,520,264 shares, equivalent to 80.81%.

[24] At this juncture, it is also necessary to state that on 5 June 2020, three days after the 2 June 2020 letter of offer, the Board of Directors of Chiptar had convened a meeting ('5 June 2020 Chiptar's Board of Directors meeting') whereby Chiptar's registered address at No 5, Jalan 45/26, Taman Sri Rampai, 53300 Setapak, Kuala Lumpur ('Setapak address') was changed to No 19 (second floor), Jalan 1/57A, Batu 3, Jalan Sultan Azlan Shah, 40150, Kuala Lumpur ('Jalan Sultan Azlan Shah address'). This is on account that Chiptar had replaced its company secretary from one Zailan bin Mohamad ('Zailan') to one Lee Mooi Yoke.

[25] The Setapak address is the address from which Zailan operates his company secretarial practice whereas the Jalan Sultan Azlan Shah address is the address in which Lee Mooi Yoke operates her company secretarial practice.

[26] At the 5 June 2020 Chiptar's Board of Directors' meeting, TTT who was present, was conspicuously silent on the first rights issue. He did Rice's financial position and the fact that THC Rice had authorised the first rights issue and that the 2 June 2020 letter of offer had been issued to Chiptar.

[27] Chiptar claimed that it did not and could not have had any *actual* notice of the first rights issue because of the manner in which TTT and CFH had chosen to communicate the same. More specifically, TTT and CFH had relied upon THC Rice's articles of association to impute knowledge of the first rights issue on Chiptar that the notice of the first rights issue is deemed to have been communicated once it is sent in a prepaid envelope to the plaintiff's registered address.

[28] THC Rice posted the 2 June 2020 letter of offer on 3 June 2020 for Chiptar to subscribe to the purchase of up to 7,081,249 new shares. The 2 June 2020 letter of offer was posted to Chiptar's:

(a) business address at No 3, Persiaran Hemisfera, Section U5 40150 Shah Alam, Selangor; and

(b) registered address at the Setapak address.

For completeness, both Chiptar and THC Rice in fact shared the same addresses.

[29] TTT and CFH have sought to impute Chiptar's knowledge of the first rights issue through the 2 June 2020 letter of offer. In this regard, they placed heavy reliance on articles 144 to 150 of THC Rice's articles of association which in essence stipulate the manner

[30] In particular, by:

(a) article 144, a THC Rice notice, which in this case is the 2 June 2020 letter of offer, is to be posted by way of certificate of posting to Chiptar's registered and business addresses; and

(b) article 146, the 2 June 2020 letter of offer is deemed served at the expiration of 24 hours after the envelope containing the notice is posted.

[31] Although there is no physical evidence that the 2 June 2020 letter of offer was actually received, Chiptar does not dispute that the 2 June 2020 letter of offer *may* be delivered in accordance with the THC Rice's articles of association. However, Chiptar contended that at the material times, it was still very much TTT who was in control of the management of Chiptar and neither TTT nor his wife CFH who was an employee and responsible for the affairs of Chiptar, had informed the Board of Directors of Chiptar of the 2 June 2020 letter of offer and or the first rights issue.

[32] In the present action. Chiptar claimed that the first rights issue was carried out against the backdrop of a void in power of management and control over Chiptar and THC Rice. This void in power was as a result of the passing of TSL on 11 February 2020. Chiptar contended that the *actual* purpose of the first rights issue was to dilute Chiptar's shareholding in order for TTT to obtain shareholding control and maintain management control of THC Rice. By reason of the aforesaid, Chiptar claimed that TTT's and CFH's exercise of power as directors of THC Rice to allot the shares was for an improper purpose.

[33] In this regard, from THC Rice's director's circular resolution dated 2 June 2020 ('the 2 June 2020 DCR'), TTT and CFH had based the first rights issue upon two purposes, namely, that there was a notice of demand from creditor(s) and based on cash flow issues. A valuation report dated 29 May 2020 was produced by THC Rice to support the valuation of the shares at RM2.30 per share.

[34] From the first rights issue, a sum of RM18,499,999.40 was paid to THC Rice on 18 June 2020 by TTT to subscribe for the rights issue.

[35] It is not disputed that by the end of June 2020, THC Rice had paid to TTT a sum of RM18.5m to reduce a purported debt due to him as director loan made by him to THC Rice.

A THE SECOND RIGHTS ISSUE

[36] Further, within a matter of five months after the first rights issue, TTT, CFH and CNM in exercise of their power as directors of THC Rice proposed to raise a further RM6,928,570.60 in November 2020. The raising of such funds was to be carried out through the allotment of 3,012,422 shares valued at RM2.30 ('the second rights issue').

[37] Unlike the method employed by TTT and CFH in notifying Chiptar regarding the first rights issue, notice of the second rights issued dated 3 November 2020 was *emailed* to the Chiptar's company secretary on 11 November 2020.

[38] In response to the notice of the second rights issue, Chiptar sought further information from TTT regarding the same. In TTT's letter dated 13 November 2020, TTT explained that the purpose of the second rights issue was on account of *financial cash flow difficulty* faced by THC Rice and enclosed a report entitled 'Accountants' Report for Forecast Working Capital Requirement' dated 2 November 2020 as justification ('the 2 November 2020 accountants' report').

[39] The 2 November 2020 accountants' report is a forecast as to the working capital that is required by THC Rice taking into account the intended expansion of THC Rice's sugar stockpile as a result of an increase in approval permit from 1,000 MT to 3,000 MT by the Ministry of Domestic Trade and Consumer Affairs and a RM6.9m bulk purchase order for super rice on top of the existing rice business. The 2 November 2020 accountants' report comprising a total of three pages concluded that an additional working capital of RM15.77m is required by THC Rice for the expansion of sugar business. With regards to the proposed rights issue, it states that '[t]he current cash at bank and trade facilities only suffice for existing business operation and does not able to support the expansion needed'.

[40] TTT, CFH and CNM have sought to wholesale rely on the 2 November 2020 accountants' report and two further accountants' reports dated 26 November 2020 and 25 February 2021 ('26 November 2020 accountants' report' and '25 February 2021 accountants' report' respectively) to justify this further round of allotment. Essentially, the 26 November 2020 accountants' report was to rebut Chiptar's contention that THC Rice in fact had a surplus of RM36.16m from its trade receivables and inventories. The 25 February 2021 accountants' report on the other hand was to substantiate a case for a shortfall in cash flow for the period from 1 July 2020 to 31 January 2021 and opined that without the second rights issue, THC 'Rice will be wound up'.

[41] Chiptar, however, was unconvinced of the ostensible purpose stated for the second rights issue nor THC Rice's financial predicament. In particular, it took the position that THC Rice has sufficient internal funds to meet the working capital requirements for the expansion of the sugar and rice business. As such, Chiptar initiated the originating summons proceedings herein under s 346 of the CA 2016 alleging oppression arising from the first rights issue and the second rights issue and on 27 January 2021, obtained an urgent interim injunction against THC Rice in respect of the second rights issue ('the 27 January 2021 interim injunction').

THIRD AND FOURTH RIGHTS ISSUES

[42] After the filing of the originating summons herein, TTT, CFH and CNM attempted two further rights issues, one in August 2022 ('third rights issue') and the other in January 2023 ('fourth rights issue').

[43] By the third rights issue, TTT, CFH and CNM sought to raise the exact amount as in the second rights issue by the allotment of the exact number of shares and at the exact value. Chiptar came to learn of this third rights issue by way of a THC Rice's letter dated 17 August 2022 that was received by Chiptar on 23 August 2022.

[44] Chiptar protested against the proposed third rights issue on the grounds that: (i) the THC Rice's letter dated 17 August 2022 contained no reasons or rationale towards the allotment exercise; and (ii) that proceeding with the third rights issue appear to be in breach of the 27 January 2021 interim injunction.

[45] After Chiptar's protest against the third rights issue, TTT, CFH and CNM informed of their decision not to proceed with the same.

[46] Notwithstanding the aforesaid and pending the determination of this court of the originating summons herein, sometime in January 2023 and over the Chinese New Year period, TTT, CFH and CNM sought to carry out the fourth rights issue.

[47] This time, TTT, CFH and CNM sought to raise RM7,348,483.90 through the allotment of 3,194,993 THC Rice shares valued at RM2.30 per share. Chiptar came to learn of this fourth rights issue by way of a THC Rice letter of offer dated 18 January 2023, that was received by Chiptar on 26 January 2023.

[48] Chiptar was required to respond to the letter of offer dated 18 January 2023 by 5pm on 2 February 2023. The consequence of Chiptar not responding

A to the letter of offer dated 18 January 2023 would, by extension, result in the further dilution of Chiptar's shareholding in THC Rice.

[49] Chiptar again protested against the forth rights issue because no reasons or rationale towards the allotment exercise were provided. In addition, the B effect of the fourth rights issue will alter the status quo of parties that has been preserved by the 27 January 2021 interim injunction.

[50] In the circumstances, Chiptar sought from TTT, CFH and CNM an undertaking that they will not proceed with the fourth rights issue pending C disposal of the originating summons herein for which oral submission was then scheduled on 24 February 2023.

[51] By letter dated 30 January 2023 from their solicitors, TTT, CFH and D CNM sought to justify the fourth rights issue premised upon THC Rice's need to raise funds to meet: (i) Chiptar's demand for RM3,050,829.25 based on a judgment obtained against THC Rice in Suit WA-22NCC-364–08 of 2021 ('Suit 364'); and (ii) the costs of building a new weighbridge. Consequently, TTT, CFH and CNM insisted on proceeding with the fourth rights issue.

E

[52] On account of the aforesaid, Chiptar filed encl 136 herein for a further urgent interim injunction against the fourth rights issue. An order in terms was granted upon the undertakings proffered by Chiptar that it would not demand F the sum in Suit 364 and that it would allow THC Rice to continue the use of the existing weighbridge owned by Chiptar ('the 2 February 2023 interim injunction').

[53] It is disappointing that TTT, CFH and CNM had insisted on G proceeding with the fourth rights issue even after Chiptar had provided the said undertakings, necessitating the making of the 2 February 2023 interim injunction.

THE ORIGINATING SUMMONS

H

[54] By this originating summons, it is Chiptar's case that when TTT's, CFH's and CNM's actions are viewed in its entirety, it is clear that the affairs of THC Rice have been and continue to be managed in a manner that is oppressive, in disregard, unfairly discriminatory and prejudicial to Chiptar's I interest as a member of THC Rice.

[55] By the amended notice of application in encl 91, a consent order *vide* encl 127 was recorded wherein:

(a) the respective deponents of Chiptar's and TTT's affidavits will be cross-examined. Cross-examination was confined to the issue of proper purpose behind the first rights issue and the second rights issue; and

(b) Tan Wae Leng ('DW1') who is the author of the 2 November 2020 accountants' report, the 26 November 2020 accountants' report and the 25 February 2021 accountants' report will be cross-examined as to the reports towards the issue of proper purpose.

[56] Cross-examination of the deponent of Chiptar's affidavits, Ter Siew Lan ('TSL' or 'Wendy') who testified as PW1, took place on 14 September 2022. The cross-examination of Tan Wae Leng, DW1 took place on 11 October 2022. After cross-examination of DW1, learned counsel for Chiptar elected not to pursue cross-examination of TTT on his affidavits.

LAW OF DILUTION OF SHARES

[57] It is an established legal principle that a director's use of powers to allot shares to destroy or to dilute a shareholder's shareholding in a company is an improper exercise of such powers.

[58] The Privy Council in *Howard Smith Ltd v Ampol Petroleum Ltd and others* [1974] 1 All ER 1126 at p 113 ('Howard Smith') held that while the exercise of a director's fiduciary power may be *intra vires*, such exercise of power may be challenged on the ground that it was made for an improper purpose:

> ... Thus, and this is not disputed, the issue was clearly intra vires the directors. But, intra vires though the issue may have been, the directors' power under this article is a fiduciary power: and it remains the case that *an exercise of such a power though formally valid, may be attacked on the ground that it was not exercised for the purpose for which it was granted*. (Emphasis added.)

[59] The Privy Council in *Howard Smith* at p 1134c further held that where there is a dispute or challenge as to a director's action, the court has to determine whether the exercise of powers was made for a proper purpose or otherwise:

> In Their Lordships' opinion it is necessary to start with I consideration of the power whose exercise is in question, in this case a power to issue shares. Having ascertained, on a fair view, the nature of this power, and having defined as can best be done in the light of modern conditions the, or some, limits within which it may be exercised, *it is then necessary for the court, if a particular exercise of it is challenged, to examine the substantial purpose for which it was exercised, and to reach a conclusion whether that purpose was proper or not. In doing so it will necessarily give credit to the bona fide opinion of the directors,* if such is found to exist, and will respect their judgment as to matters of management; having done this, the ultimate conclusion has to be as to the side of a fairly broad *line on which the case falls.* (Emphasis added.)

[60] The trial judge in *Howard Smith* found that the primary purpose of the directors supporting the allotment of shares in that case was to reduce the shareholding of the majority shareholder and not to raise capital for the company. Such exercise of powers was found to be for an improper purpose. The Privy Council upheld the trial judge's decision and at pp 1135h and 1136d, held:

> ... The constitution of a limited company normally provides for directors, with powers of management, and shareholders, with defined voting powers having power to appoint the directors, and to take, in general meeting, by majority vote, decisions on matters not reserved for management. Just as it is established that directors, within their management powers, may take decisions against the wishes of the majority of shareholders, and indeed that the majority of shareholders cannot control them in the exercise of these powers while they remain in office (*Automatic Self Cleansing Filter Syndicate Co Ltd v Cunninghame*), *so it must be unconstitutional for directors to use their fiduciary powers over the shares in the company purely for the purpose of destroying an existing majority, or creating a new majority which did not previously exist.* To do so is to interfere with that element of the company's constitution which is separate from and set against their powers ...
>
> Their Lordships therefore agree entirely with the conclusion of Street J [the trial judge] that the power to issue and allot shares was improperly exercised by the issued of shares to Howard Smith. It was not disputed that an action to set aside the allotment and for rectification of the register was properly brought by Ampol as plaintiff. (Emphasis added.)

[61] *Howard Smith* is not a case of oppression. It is a case involving the exercise of power by directors of a company for an improper purpose. However, an act of dilution of the shares of a shareholder can amount to oppression.

[62] In *Re Cumana Ltd* [1986] BCLC 430 ('Re Cumara Ltd'), the majority shareholder, Bolton, caused the company to undertake a rights issue knowing that Lewis, the minority shareholder, was unlikely to take up his proportion of new shares since he was unemployed and financially challenged. The proposed rights issue in the event Lewis did not take up the shares would result in reducing Lewis' minority holding from one-third to less than 1%. Lewis brought an action under the precursor to s 459 of the UK Companies Act 1985 asserting, inter alia, that the rights issue was unfairly prejudicial to him. The judge at first instance found that the proposed rights issue was a scheme to reduce Lewis's shareholding and was unfairly prejudicial to Lewis's interests. This was affirmed by the English Court of Appeal.

[63] The High Court of South Africa's judgment in *CDH Invest NV v Petrotank South Africa (Pty) Ltd (483/2018)* [2019] ZASCA 53 ('CDH Invest') also provides useful guidance on this issue. The court in *CDH Invest* discussed the application of the subjective and objective tests viz to determine whether a director's exercise of power in allotting shares is carried out for a

proper purpose or otherwise. The discussion made reference to the commonwealth jurisdictions of Canada and Australia. More specifically, paras [62] to [66] of the judgment held:

> [62] Finally, on the question whether these fiduciary duties are to be tested against subjective or objective standards, the learned judge held that the duty to act bona fide in the best interests of the company, and the duty to exercise powers only for a proper purpose, is conceptually different.
>
> [63] In relation to the first duty, that is to act bona fide in the best interests of the company, the learned judge held that despite the subjective language, there was still an objective element involved:
>
> > *Brennan J in Wayde v New South Wales Rugby League Ltd* [1985] HCA 68; (1985) 180 CLR 459, 469–470 considered that this proposition was justified by *Shuttleworth v Cox Brothers & Co (Maidenhead) Ltd* [1927] 2 KB 9, 23–24. *Brennan J's statement that such a conclusion is the penultimate step to inferring that the directors did not make their decision in good faith for a purpose within the power does not, I think, alter the fact that this test enables the court to set aside a manifestly unreasonable decision even though the directors may in fact have honestly believed they were acting properly.*
>
> [64] The learned judge then concluded:
>
> > *In my opinion, the duty of directors to act bona fide in the interests of the company is subjective in that whether it has been fulfilled depends on the directors honestly believing that their actions were in the interests of the company. However, the test for determining whether the duty of directors to exercise their powers for proper purposes has been complied with is an objective one for the court, not the directors.*
>
> [65] The learned judge then dealt with the directors' power to issue shares. He subscribed to the notion that it was a fiduciary power, and concluded in this context:
>
> > *Whether there has been a proper exercise of such a power cannot be governed by whether the director exercising it honestly believes he has done the right thing. It is for the court to determine whether, in the circumstances of the case, the power has been exercised for a proper or improper purpose. The test is therefore an objective one.*
>
> [66] *This far the reference to Australian authority. The takeaway for present purposes from these cases in Canada and Australia is that there is persuasive authority for the proposition that the director's power to issue shares is a fiduciary power that has to be exercised proactively; that the directors' belief that it was exercised in good faith in a given scenario is still subject to court control where there is no rational basis for that belief; and that the exercise of the power for a proper purpose is fully subject to an objective test.*

[64] *CDH Invest* is consistent with Federal Court's decision in *Tengku Dato' Ibrahim Petra bin Tengku Indra Petra v Petra Perdana Bhd and another appeal* [2018] 2 MLJ 177 at para 193 where the test to determine whether a director is in breach of his duties combines both the subjective and objective tests.

[65] But in relation to the question whether the allotment of shares was for an improper purpose, the test is an *objective* one.

COURT'S CONSIDERATIONS

[66] In the present case, it must be borne in mind that the originating summons was taken out on the basis of the first rights issue which Chiptar contended was oppressive against the company as the shareholder of THC Rice. The second rights issue, although restrained by the 27 January 2021 interim injunction, was nevertheless, evidence of a continuing and ever-present mindset of TTT, CFH and CNM to exercise the power as directors of THC Rice in a manner oppressive and or unfairly and or prejudicial to Chiptar.

[67] One must be mindful that a breach of a fiduciary duty by one shareholder to the other does not automatically equate to conduct proscribed under the oppression provisions under the CA 2016. The critical question is whether the breach of fiduciary duty was unfair to the complainant within the meaning of s 346 of the CA 2016 (see *Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Corp (M) Bhd & Anor* [2010] MLJU 269; [2010] 1 MLRA 761).

[68] Further, a shareholder's or a director's wrongful act may give rise to a corporate wrong entitling the company to take an action. However, as I have held in *Dato' Shabaruddin bin Ibrahim v Dato' Ruslan bin Ali Omar & Ors* [2020] MLJU 1744; [2021] 2 MLRH 1 at paras [86] to [87], a corporate wrong can be a basis for an oppression action if the wrong is evidence of the manner in which the wrongdoer conducted the company's affairs in disregard of the complainant's interests as a shareholder, more so where there are reasons to infer that the wrongdoer's propensity or tendency to oppress or disregard the interest of the other shareholder not only exists but continues to exist at the time of the proceedings.

[69] Thus, to my mind, in the present case once this court finds based on an objective test that the power of directors in relation to the proposed first rights issue was exercised with the improper purpose of diluting the shareholdings of Chiptar and that this tendency to oppress or disregard Chiptar's interests as a shareholder of THC Rice continues at the time of the originating summons, a case for oppression would have been established.

IMPROPER PURPOSE OF FIRST RIGHTS ISSUE

[70] Thus, in the evaluation of the proper purpose or otherwise of the first rights issue, one must begin with the examination of the substantive purpose proffered by TTT and CFH as support for undertaking the same.

[71] The very first time TTT disclosed the reasons and or rationale behind the first rights issue was via his affidavit in reply dated 26 August 2020 in Suit 256 which exhibited the 2 June 2020 DCR.

[72] By the 2 June 2020 DCR, the first rights issue was premised on the following reasons:

(a) that THC Rice received a demand from creditor(s); and

(b) cash flow issues caused by the Covid-19 pandemic.

[73] However, neither TTT nor CFH has produced any evidence:

(a) of the notice of demand from the creditor(s) nor have they identified who were the creditor(s) who had made the demand;and

(b) in support of the claim that THC Rice was in cash flow difficulty as a result of the Covid-19 pandemic.

[74] Of significance is the fact that in THC Rice's audited financial statement for the financial year ended 30 June 2021 (THC Rice's 2021 AFS), it is stated that 'Despite the challenging market conditions caused by the COVID-19 pandemic, the Company's results and financial position remain resilient. At this stage, the impact on our business and results has not been significant':

> 29. Significant event during the reporting period
>
> COVID-19 was declared a pandemic by the World Health Organisation on 11 March 2020. Measures undertaken to contain its spread severely impacted global economies, leading to significant volatility of the financial and business markets, which in turn has implications for the financial reporting.
>
> Despite the challenging market conditions caused by the COVID-19 pandemic, the Company's results and financial position remain resilient. At this stage, the impact on our business and results is has not been significant.
>
> Subsequent to the reporting date and even with the vaccine rollouts, the COVID-19 pandemic continues to evolve and the impact on the economy remains uncertain. The Government is also periodically implementing additional measures to address the resulting public health issues and the economic impact. Thus, the Group will continue to monitor the COVID-19 pandemic situation and will take action as and when necessary.

[75] In fact, no evidence has been adduced by TTT and CFH as directors of THC Rice to demonstrate that THC Rice was indeed facing a cash flow crisis at the material time necessitating a need for a rights issue to be undertaken.

[76] Further, as alluded to in the background facts, the RM18.5m that was paid into THC Rice by TTT to subscribe for the shares pursuant to the first

rights issue, was almost immediately used to pay TTT purportedly for outstanding director loan due from THC Rice to him.

[77] In the first place, the assertion that a sum of RM18.5m was owed to TTT as a director of THC Rice is not supported by any evidence. 'Note 21' of THC Rice's audited financial statement for financial year ending 30 June 2021 referred to 'Amount due to Holding company/a director is unsecured, interest free and repayable on demand'. But, during the financial year for the period from 1 July 2019 to 30 June 2020, THC Rice had three directors, namely, TSL, TTT and CFH. There is no evidence provided by TTT that the 'director' referred to was him and not TSL or CFH.

[78] Further, TTT never produced his demand, if any, to THC Rice for the amount due to him as a director. If indeed the sum of RM18.5m was owed by THC Rice to TTT as a director and the creditor in question who had demanded payment was TTT himself, this would mean that the financial predicament of THC Rice was unnecessarily precipitated by TTT himself. No explanation was given, if at all, as to why the sum owed suddenly needed to be paid.

[79] On the contrary, from the THC Rice's bank statements, what are disclosed show that TTT had in fact started withdrawing the sums of RM2.5m, RM2.5m, RM2.5m and RM1m from THC Rice on 9 June 2020, 10 June 2020, 11 June 2020 and 12 June 2020 respectively to pay himself.

[80] Subsequently, on 19 June 2020, THC Rice's books recorded that TTT had deposited a total of RM18.5m towards his subscription of the rights issue. In respect of the said sum, TTT had issued cheques dated 9 June 2020. 10 June 2020, 11 June 2020 and 12 June 2020 for the sums of RM2.5m, RM2.5m, RM2.5m and RM1m respectively which are the same dates that the corresponding sums were withdrawn from THC Rice by TTT alluded to above.

[81] Thereafter, he entire sum of RM18.5m raised from the first rights issue were withdrawn within the next seven working days to pay TTT without leaving any sums to meet and or alleviate the supposedly cash flow issues which one would expect if indeed THC Rice was in dire need of cash.

[82] In fact, save for a business valuation report dated 29 May 2020 which opined that the value of the share price of THC Rice as at 30 April 2020 ranged from RM2.25 per share to RM2.50 per share, no accountants' report or any other reports were produced to demonstrate that THC Rice needed to raise fresh capital amounting to RM21.875m (which was the total sum sought to be

raised under the first rights issue) to meet the demand from its creditors and to address its cash flow difficulty owing to the Covid-19 pandemic.

[83] Neither did TTT nor CFH exhibit any minutes of THC Rice's Board of Directors' meetings deliberating on the rationale or reasons or need for the first rights issue.

[84] Absence any independent professional reports and minutes of any THC Rice's Board of Directors' meetings on the first rights issue, it is indeed difficult to appreciate how it can be shown that TTT and CFH had held a bona fide belief that the first rights issue was necessary and indeed that the first rights issue was undertaken for a proper purpose and in the interest of THC Rice. Certainly, from an objective view point, it cannot be said that there are facts to substantiate a proper purpose for the rights issue.

CONCEALMENT OF THE FIRST RIGHTS ISSUE

[85] On the contrary, the questionable nature of the first rights issue takes an even more sinister complexion when one looks at the surreptitious manner in which the Notice of the first rights issue was communicated to Chiptar.

[86] As alluded to above, THC Rice posted the 2 June 2020 letter of offer on 3 June 2020 for Chiptar to subscribe to the purchase of up to 7,081,249 new shares. The 2 June 2020 letter of offer was posted to Chiptar's:

(a) business address at No 3, Persiaran Hemisfera, Section U5 40150 Shah Alam, Selangor; and

(b) registered address at No 5, Jalan 45/26, Taman Sri Rampai, 53300 Setapak, Kuala Lumpur.

[87] As stated in the 2 June 2020 letter of offer, the deadline imposed by THC Rice for Chiptar to respond to the offer for subscription was by 5pm on 18 June 2020.

[88] Whilst it is true that by the aforesaid postal service of the 2 June 2020 letter of offer, article 144 and article 146 of THC Rise's articles of association which stipulate the manner in which notices of THC Rice the 2 June 2020 letter of offer is deemed served at the expiration of 24 hours after the envelope containing the notice is posted, nevertheless, one is left with the obvious question as to why neither TTT nor CFH had deemed it fit to draw to the attention of the Board of Directors of Chiptar the 2 June 2020 letter of offer or the first rights issue at the 5 June 2020 Chiptar's Board of Directors' meeting. After all, surely it must be in the interest of THC Rice for Chiptar being its most substantial shareholder to subscribe to the entire right issues allotted to it?

A **[89]** On the issue of Chiptar's actual notice of the first right issue, the circumstances that existed prior to and leading to the time of the first rights issue must be appreciated.

B **[90]** Prior to TSL's demise, both Chiptar and THC Rice were managed exclusively by TSL and TTT only. This is notwithstanding that TCH and LYH were also directors of Chiptar at the time. In fact, it is not disputed that TCH, LYH and TWH who were shareholders of Chiptar had never been involved in the affairs of Chiptar besides attending to the signing of documents.

C **[91]** After TSL passed away on 11 February 2020, TWH was appointed as a director of Chiptar on 4 March 2020 and TCH, LYH and TWH also appointed their respective alternate directors on the same day. This signalled their intention to take a more active role in the management of Chiptar. In fact, D the 4 March 2020 Chiptar's Board of Directors meeting was specifically convened to make the aforesaid appointments.

[92] Notwithstanding the aforesaid, none of the shareholders or directors or their respective alternate directors were informed by TTT of the 2 June 2020 E letter of offer and or the first rights issue at any time. No steps were taken at all by TTT for Chiptar to convene a directors' meeting to deliberate and discuss on the 2 June 2020 letter of offer for a decision as to whether Chiptar ought to take up the 2 June 2020 letter of offer.

F **[93]** Both TTT and CFH have never denied that they did not communicate the first rights issue to Chiptar, except in the manner prescribed in THC Rice's articles of association. This then calls into examination the following capacities of TTT and CFH in Chiptar. In this regard:

G (a) TTT is a director of Chiptar; and

(b) CFH was an employee of Chiptar at the material time.

[94] Given that both TTT and CFH were at the material times also directors H of THC Rice, it stands to reason that if indeed THC Rice was in dire need for some cash injection to meet its creditors' demand and to overcome its cash flow problems, one would have expected TTT and or CFH to be most anxious for Chiptar, as THC Rice's then largest shareholder to be notified of the first rights issue.

I **[95]** Instead, both TTT and CFH appeared content to remain silent and basically happy to take refuge behind THC Rice's articles of association that the mere posting of the 2 June 2020 letter of offer to inform of the first rights issue

to the exclusion of all other manner of communication was adequate. Their conduct in this regard is curious indeed and cries out for an explanation which regrettably was not forthcoming.

[96] In fact, TTT had every opportunity to inform Chiptar of the first rights issue. This is because Chiptar's Board of Directors' had convened a meeting on 5 June 2020, a mere three days *after* TTT had signed the 2 June 2020 DCR to authorise the first rights issue and a mere two days after the 2 June 2020 letter of offer was sent to Chiptar.

[97] However, from the minutes of the 5 June 2020 Chiptar's Board of Directors' meeting, TTT was conspicuously silent on the first rights issue and or the 2 June 2020 letter of offer.

[98] TTT had knowledge that at the 5 June 2020 Chiptar's Board of Directors' meeting, it was resolved that Chiptar's registered address at the Setapak address ie No 5, Jalan 45/26, Taman Sri Rampai, 53300 Setapak, Kuala Lumpur was to be changed to the Jalan Sultan Azlan Shah address ie No 19 (Second Floor), Jalan 1/57A, Batu 3, Jalan Sultan Azlan Shah, 40150, Kuala Lumpur. This is on account that Chiptar replacing its company secretary from Zailan bin Mohamad to Lee Mooi Yoke.

[99] As stated, the Setapak address is the address for which Zailan Azlan Shah address is the address in which Lee Mooi Yoke operates her company secretarial practice.

[100] Despite having knowledge of the change of Chiptar's registered address at the 5 June 2020 Chiptar's Board of Directors' meeting, TTT did nothing to have the 2 June 2020 letter of offer re-delivered to Chiptar's Jalan Sultan Azlan Shah address.

[101] More importantly, TTT could have and should have informed Chiptar's Board of Directors of the 2 June 2020 letter of offer and the first rights issue especially when the same was solely within the knowledge of himself and or CFH. None of the other directors and shareholders of Chiptar could have known about it at that point in time. Yet, neither TTT nor CFH took any actions to do so. The aforesaid strongly suggests that both TTT and CFH were in fact deliberately hiding the first rights issue from the knowledge of the directors of Chiptar.

[102] In this regard and for completeness, it must be stated that there is in fact no evidence that the 2 June 2020 letter of offer was actually received by Chiptar either at its business address or its registered address. Even when the secretarial

documents were transferred to the new company secretary, the 2 June 2020 letter of offer was not included in the documents forwarded.

[103] The 2 June 2020 letter of offer was the notice to Chiptar of the first rights issue. It was not accompanied by documents furnishing information as regards the reasons for THC Rice to raise funds by way of rights issue. This is most unsatisfactory as shareholders ought to have sufficient information for them to make informed decisions about the proposed rights issue. Such omission further put into question the bona fide intention of the directors of THC Rice in calling for the first rights issue.

TTT ACTED KNOWING CHIPTAR WOULD NOT SUBSCRIBE THE SHARES ALLOTTED

[104] In fact, there is yet another significant fact that further fortifies the inference that TTT had intentionally concealed the 2 June 2020 letter of offer and the first rights issue from Chiptar.

[105] It transpired that by 15 June 2020, (three days *before* the deadline for Chiptar to subscribe for the shares on 18 June 2020) TTT was ready to purchase the shares that were offered to Chiptar. This is evidenced by the following:

(a) on affidavit, TTT provided the respective dates of the cheques to which he deposited monies into THC Rice for the subscription of shares;

(b) TTT subscribed to all 1,668,751 THC Rice shares valued at RM2.30 per share that were offered to him. The value of the said shares would amount to RM3,838,127.30;

(c) TTT affirmed at para 11 and para 12 of his affidavit ('encl 122') that he had deposited cheques totalling the sum of RM10m into THC Rice for the allotted shares. The said cheques totalling RM10m were dated on 9 June 2020, 10 June 2020, 11 June 2020, 12 June 2020 and 15 June 2020. The amounts on these cheques (save for the cheque dated 15 June 2020) mirrored the monies that TTT had withdrawn from THC Rice that I alluded to above; and

(d) via a THC Rice application form to purchase excess shares received by THC Rice on 16 June 2020, TTT had applied to purchase 6,374,727 shares that were offered to Chiptar on 16 June 2020, two days before the expiration date for Chiptar to take up the offer.

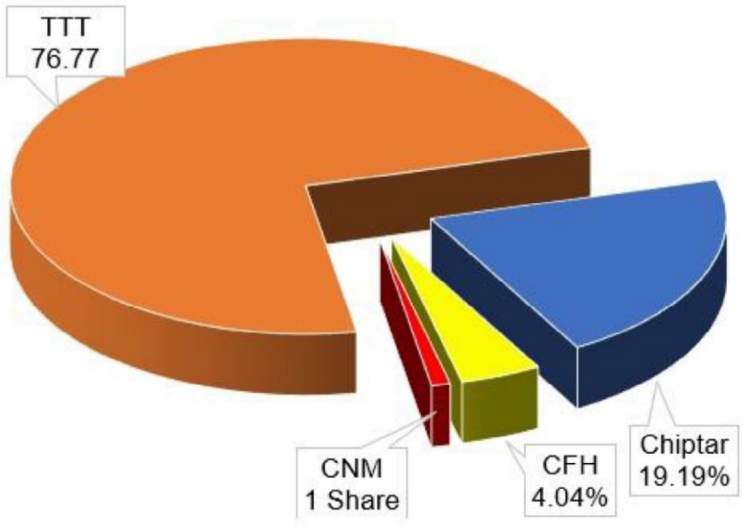
[106] Quite apart from the fact that TTT was drawing from THC Rice monies which he then used to subscribe for the first rights issue, the above evidence demonstrates that TTT had anticipated that Chiptar would not

respond to the 2 June 2020 letter of offer even *before* the deadline for Chiptar to accept had lapsed. The inescapable inference is that TTT had already known that Chiptar would not be subscribing to the shares allotted because the 2 June 2020 letter of offer was never brought to the attention of its Board of Directors. The plain and planned purpose for the first right issue was for TTT to become a majority shareholder of THC Rice upon Chiptar defaulting in taking up the allotted shares for want of notice of the same.

[107] Consequently, by 19 June 2020, TTT had acquired and was issued a total of 8,043,478 THC Rice shares, becoming the majority shareholder of THC Rice at Chiptar's expense. The issuance of such shares was reflected in a THC Rice Directors' Circular Resolution dated 19 June 2020, signed by none other than TTT and CFH. For completeness, from the first rights issue, THC Rice raised a sum of RM18,499,999.40 instead of the total RM21,875,000 if all the rights issue were fully subscribed.

[108] Subsequent to the first rights issue, TTT then transferred 426,013 shares of THC Rice to his wife, CFH and one share to his mother, CNM.

[109] As a result, the present shareholding structure of THC Rice *post* the first rights issue is as follows:



[110] No notice was given to Chiptar to inform it of the results of the first rights issue at all. The entire clandestine operation smacks of abuse of powers by TTT and CFH in the exercise of their powers as directors of THC Rice in calling for the first rights issue.

A UTILISATION OF THE RM18,499,999.40

[111] If there is still any scintilla of doubt as to the improper purpose of the first rights issue, this is completely dispelled from the utilisation of the RM18,499,999.40 that was raised from the first rights issue. In fact, this was only discovered after this court granted the application filed by Chiptar pursuant to s 7 of the Bankers' Books (Evidence) Act 1949 vide encl 74 to obtain evidence regarding the monies paid to THC Rice for the first rights issue.

[112] Given the lack of evidence to show that TTT had paid RM18,499,999.40 for the 8,043,478 THC Rice shares that were allotted to him, Chiptar had doubts over whether TTT had indeed paid for the shares that were allotted to him. This prompted Chiptar to file the aforesaid application for discovery.

[113] Chitpar's doubts were compounded by the following:

(a) by 2 November 2020 accountants' report titled 'Working Capital Analysis Report' where the same states that the sum of RM18,499,999.40 had a 'positive effect on working capital position' on THC Rice. In support of this, DW1 had relied on an unaudited statement of financial position of THC Rice between 31 May 2020 and 30 June 2020 which reflects that sums due to directors of THC Rice was reduced by RM20,494,967:

EQUITY AND LIABILITIES		
Capital and reserves		
Share capital	2,500,000	21,000,000
Retained earnings	23,411,909	18,406,920
Shareholders' equity	**25,911,909**	**39,406,920**
Non-current liabilities		
Deferred tax liabilities	399,710	399,710
Total non-current liabilities	**399,710**	**399,710**
Current liabilities		
Trade payables	6,108,694	14,146,009
Other payables and accruals	1,563,308	1,223,372
Amount due to directors	28,758,834	8,263,967
Borrowings	15,794,359	15,946,342
Finance lease payables	3,278,885	4,141,311
Total current liabilities	**55,504,078**	**40,721,000**
TOTAL LIABILITIES	**55,903,788**	**41,120,710**
TOTAL EQUITY AND LIABILITIES	**81,815,697**	**80,527,630**

(b) THC Rice's audited financial statement for financial year ending 30 June 2021 which provides that the issuance of 8,043,478 shares at RM2.30 per share was for a 'non-cash consideration':

> Issue of shares and debentures
>
> The Company has issued 8,043,478 ordinary shares of RM2.30 each for non-cash consideration during the year. The newly issued shares rank pari passu with the existing shares of the Company.

[114] Pursuant to the order of this court to inspect and obtain ledger statements, day books, cash books and accounts books in connection with THC Rice's Public Bank Account No 3173602727 for the month of June 2020 ('June 2020 statement'), Chiptar discovered from the review of the June 2020 statement that in as much as RM18.5m was deposited by TTT into THC Rice's bank account in June 2020, RM18.5m was treated as withdrawn by and transferred to TTT by 30 June 2021.

[115] Confronted with the June 2020 statement, TTT conceded that he was paid RM18.5m to reduce an amount that was said to be due to him as a director of THC Rice. As alluded to above, there is no evidence produced to substantiate that there was indeed such amount due to TTT. The lack of any evidence to substantiate the debt due from THC Rice to TTT puts into question the bona fide of the first rights issue. Significantly prior to TSL's demise, he too had made advances to THC Rice and the Note 12 to THC Rice's financial statements for the year ended 30 June 2020 referred to loan made by 'a holding company/director'. It is therefore incumbent upon TTT to show that he was indeed the director to whom THC Rice had owed and not TSL or any other person.

[116] In any case, quite clearly, with the payment made to TTT the money raised from the first rights issue, THC Rice was left with no money from the proceeds of the first rights issue to resolve the purported cash flow issues that THC Rice was said to be facing at that material time. This of itself shows that the entire exercise in respect of the first rights issue was a self-dealing manoeuvre and that the claim of 'a cash flow difficulty' was a complete farce.

[117] Furthermore, the description in THC Rice's audited financial statement for financial year ending 30 June 2021 which provides that the issuance of 8,043,478 shares at RM2.30 per share was for a 'non-cash consideration' was never satisfactorily explained. The cheques dated 9 June 2020. 10 June 2020, 11 June 2020 and 12 June 2020 for the sums of RM2.5m, RM2.5m, RM2.5m and RM1m respectively which were issued by TTT to subscribe for the rights issue which corresponded with the dates that TTT had withdrawn similar sums from THC Rice requires explanation which again was not forthcoming.

FIRST RIGHTS ISSUE WAS DILUTION OF CHIPTAR'S SHAREHOLDING

[118] To my mind, the true purpose for the first rights issue in the above circumstances is plain for all to see. It was designed with the sole purpose of diluting Chiptar's shareholding in THC Rice. It was carried out while keeping Chiptar completely in the dark of the first rights issue.

[119] The is no evidence to suggest that TTT and CFH, in the exercise of their fiduciary duty as directors of THC Rice, had held the belief that they were in fact exercising the powers vested in them honestly and in good faith for the proper purpose of raising funds for the company's needs. Indeed, no rational explanation has been proffered by TTT and CFH for the failure to notify the directors of the first rights issue at 5 June 2020 Chiptar's Board of Directors' meeting nor was there even an attempt made to explain the utilisation of the RM18.5m raised from the first rights issue. From the objective view point, it cannot be said that the directors' power was exercised for a proper purpose at all.

[120] Although in the 2 November 2020 accountants' report, DW1 had stated that the sum of RM18,499,999.40 had a 'positive effect on working capital position' on THC Rice, this was simply on the basis that with the reduction of the outstanding due to the director, THC Rice's financial position from a balance sheet point of view had become such that it was better placed to secure financing from financial institutions. This, however, was not the purpose of the first rights issue. In fact, there is no evidence that without the payment to TTT, THC Rice would be in no position to seek financing or to continue its facilities from its financial institutions. In any case, there is no rights issue by reason of the 'positive effect on working capital position'.

OPPRESSION ESTABLISHED

[121] To my mind, a singular dilution of the shareholding of a shareholder in an unfair and egregious manner can suffice as oppressive conduct if it shows a strong propensity or tendency to blatantly disregard or prejudice the interest of the said shareholder.

[122] In *Re Cumana Ltd*, the English Court of Appeal upheld the High Court judge's holding that the singular proposed rights issue which was nothing more than a scheme to reduce the minority shareholdings knowing that the minority shareholder was unlikely to take up his proportion of new shares since he was unemployed and financially challenged was sufficient to constitute oppressive conduct.

[123] To my mind, the facts in our present case is even more egregious and reprehensible. It was a blatant and sneaky conduct designed to conceal the proposed rights issue from the notice of Chiptar and in a clandestine manner, diluted Chiptar's shareholdings in THC Rice from a significant 80.93% to a mere 19.19% without even an attempt to disclose the same after the first right issue until TTT was forced to disclose the same when commencing Suit 256.

[124] Accordingly, it is my judgment that on the basis of the first right issue alone, Chiptar has successfully established a case of oppressive conduct under s 346 of the CA 2016.

[125] Although the aforesaid finding is sufficient to conclude in favour of Chiptar, for completeness, I will also consider TTT's, CFH's and CNM's conduct in respect of the second rights issue, the third rights issue and the fourth rights issue. To my mind, these proposed rights issues are further evidence of the propensity and or tendency to act unfairly against Chiptar, disregarding and or prejudicing its interests as a shareholder of THC Rice.

IMPROPER PURPOSE OF SECOND RIGHTS ISSUE AND THIRD RIGHTS ISSUE

The second rights issue

[126] As alluded to above, about five months after the first rights issue, TTT, CFH and CNM, in exercised of their powers as directors of THC Rice, proposed the second rights issue.

[127] By THC Rice letter dated 3 November 2020 which was emailed to Chiptar on 11 November 2020, Chiptar was informed that THC Rice will be allotting an additional 3,012,422 shares valued at RM2.30 each after 5pm on 17 November 2020 ('notice of second rights issue').

[128] Although the notice of second rights issue refers to a 'Directors' Circular Resolution dated 3 November 2020' ('3 November 2020 DCR'), the 3 November 2020 DCR was never disclosed to Chiptar.

[129] By letter dated 12 November 2020, TCH wrote to TTT to urge him to consent and attend a Board of Directors meeting on 13 November 2020 to seek for an explanation from TTT over the second rights issue.

[130] TTT responded via its letter dated 13 November 2020 to inform that the main reason for the second rights issue was due to THC Rice's 'financial cash flow difficulty and attached the 2 November 2020 accountants' report which alluded to THC Rice's intention to raise RM7m for the expansion of its:

(a) sugar business, due to an increase in the approved permit for THC Rice to increase its stockpile of sugar from 1,000 MT to 3,500 MT; and

(b) rice business, to meet a RM6.9m bulk purchase order from a purchaser for super rice on top of the existing rice business.

[131] Chiptar, however, held the view that the then existing working capital of THC Rice was sufficient to meet its business expansion plans and filed an application to this court to restrain the second rights issue pending the disposal of the present proceedings which this court granted on 27 January 2021.

[132] As with the first rights issue, the claim that THC Rice has 'financial cash flow difficulty' is difficult to reconcile with THC Rice's 2021 AFS which states that 'Despite the challenging market conditions caused by the COVID-19 pandemic, the Company's results and financial position remain resilient. At this stage, the impact on our business and results is [sic] has not been significant'.

[133] Indeed, there is no evidence adduced to demonstrate that THC Rice was in fact facing any difficulties meeting its financial obligations to its creditors and or satisfying its financial obligations.

[134] Significantly, while TTT enclosed the 2 November 2020 accountants' report to his 13 November 2020 letter which alluded to the purported cash flow difficulty faced by THC Rice, the 2 November 2020 accountants' report in itself does not allude to the existence of any cash flow difficulty. In fact, DW1 candidly conceded during cross-examination that the said report is not a cash flow analysis and does not represent THC Rice's cash flow situation:

> NN: I am suggesting to you that this is not a cash flow analysis. Am I correct to say that?
>
> TWL: Disagree.
>
> NN: You say that this is a cash flow analysis.
>
> TWL: This is a working capital requirement.
>
> NN: That is, right so I am asking you again that's this represent a proper cash flow statement.
>
> TWL: Is not a cash flow.
>
> NN: Yes, so you see you give me a straight answer we can move along quite comfortably. This is not a cash flow analysis is it?
>
> TWL: Not a cash flow.

[135] The 2 November 2020 accountants' report was prepared to demonstrate that the second rights issue was needed to facilitate THC Rice's business expansion, in particular, that THC Rice required an additional RM15.77 additional working capital for the expansion of its sugar business. It opined that the 'current cash at bank and trade facilities only suffice for existing business operation and does not able to support the expansion need'.

[136] However, during DW1's cross-examination, DW1 conceded that the 2 November 2020 accountants' report was not prepared based on THC Rice's financial position as an *on-going business* at all. On the contrary, the report was premised on the extreme assumption that THC Rice does not receive any income whatsoever for a certain period of time. The same is reflected in DW1's answers given in cross-examination and re-examination:

> During cross-examination:
>
> NN: This cash flow that you have projected do not take into account any income from continuing operation correct?
>
> TWL: Correct.
>
> NN: And in fact have you taken into account the income from continuing operation, you will find that the company was not in any financial difficulty. Correct?
>
> TWL: *Not sure.*
>
> YA: Hold on hold on so you are saying that tab 5 this report does not take into consideration the trade receivables.
>
> TWL: And payable.
>
> YA: And payable.
>
> TWL: Yes.
>
> YA: Would it make a difference if you have taken it into consideration?
>
> TWL: Yes.
>
> YA: And what is the difference?
>
> TWL: Ok for this one this is what cash we have is a actual amount we have in the bank. And you can see tab 5 page 5 that's a three column. So this is what expenses they are going to be due and payable. Some more is a bank borrowing is have to be paid. So that means he know there is a shortfall of how much. So you have to manage let's say debtors how much I have, whether I can collect enough or not. So of course don't forget after I collect the debtors I also need to serve my creditors. So he have to manage between how much surplus to make sure I can survive this three.
>
> YA: *So this is on the basis that the business cease.*
>
> TWL: *Yes.*
>
> YA: No business for the next few months this is the position.
>
> TWL: Yes.

[137] In other words, in coming to his conclusion, DW1 had proceeded on the assumptions that THC Rice's available trade facilities of RM22.5m is fully utilized, its trade receivables of RM27.12m will not be collected and its inventories of RM17.83m will not be sold. The aforesaid assumptions are, with

respect, completely unrealistic given that THC Rice is an on-going and profitable concern. Businesses are generally operated in reliance on its trade receivables and sales of its inventories which are used as its continuing working capital. To me, the very basis for DW1's reports renders them wholly unreliable in determining the rationality for the second rights issue.

[138] In fact, DW1 admitted that his report in the 2 November 2020 accountants' report was not premised on THC Rice having a financial cash flow difficulty but rather to report whether THC Rice required additional working capital if it plans to expand its business to fund the purchase of additional sugar pursuant to the increase in its stockpile permit. The additional RM5m required is calculated by taking RM2,500 per MT multiplied by the increase of 2,000 MT of sugar. DW1 did not consider if the cash flow of THC Rice could in fact support the expansion. This is clear from the following exchange during DW1's re-examination:

> EE: And then my learned friend asked you that why didn't you prepare a cash flow statement and then you said is for different purpose. And then my learned friend put it to you that which is more accurate to indicate whether the company is having a credit crunch and then you said is a cashflow. Can you please explain why it seems that you are trying that's we don't understand you here.
>
> TWL: When the time the director approached me right, is not saying that they got a financial crunch or financial crisis. *So what they wanted me to do is based on the business expansion, how much working capital they actually required whether they required working capital, or they are not. Is not prepare for the whether the financial difficulty.* So that's why is a different purpose when the time the director approached me.
>
> YA: *Alright.*
>
> EE: Probably can you please explain a more layman terms.
>
> TWL: Ok for cash flow analysis so let's say if let's say the company facing financial problem, so he may come to approach me can you look at my cash flow analysis and future forecast. So whether I can survive or not so if I am not able to survive, so maybe I can use this forecast how we going to restructure the loan or whatever. So that is the cash flow analysis for. *But when come to this one they approached me is not talking about I got financial difficulties, when they approached me is a they want to do a business expansion.* So can you calculate how much if it is my calculation correct, let's say I need to expand this sugar business I need to expand this rice business, so whether my working capital is a required is this much or not whether is correct or not. So.
>
> YA: So you were not concern at all as to the issue of survival ability of the company.
>
> TWL: Yes
>
> YA: *That was not an issue. You were just asked to consider if we want to expand into these two areas, would this working capital be sufficient.*

TWL: *Yes.*

YA That's all.

TWL: Yes.

YA Correct or not?

TWL: Correct.

YA: *You were not asked to say right if we want to expand this, can you look at it from my cash flow point of view, how much ought to be available so that our cash flow can meet the expansion.*

TWL: *Yes.*

[139] Quite apart from the above, there is a further reason why the 2 November 2020 accountants' report ought to be viewed critically. DW1 candidly admitted that he had not conducted any audit and or solely on the statements and figures given to him by TTT. In other words, there is no independent verification of the statements and information given to DW1 at all. He also failed to explain why only THC Rice's Public Bank account was considered when the company has other bank accounts with available cash balances.

[140] Also, THC Rice has not demonstrated that it could not obtain the additional working capital (if indeed there was such a need) for its expansion plans from its financial institutions as an alternative to the rights issue. There is no evidence of any steps taken by THC Rice to secure new bank loans and or to increase its trade facilities based on the estimated gross profits expected from the expansion of its sugar business and the purported bulk purchase order from one Sri Nona Food Industries Sdn Bhd.

[141] After all, based on DW1's testimony, the effect of the first rights issue had resulted in 'a positive financial position for THC Rice' which must mean that THC Rice *post* the first rights issue would have been better placed to secure financing from the banks. Yet, this was not explored at all by THC Rice.

[142] In this regard, although TTT had alluded to TSL sending an email dated 11 September 2020 to Encik Ridzuan bin Shamsudin, the Head of Commercial in Agro Bank to withdraw the pledge of a bungalow for the existing loan facility of RM10m to THC Rice, which TTT sought to rely upon to claim the existence of 'financial issues', there is no evidence that Agro Bank had taken any steps to withdraw its loan facility to the company at all or even threatened to do so.

[143] Furthermore, as highlighted by learned counsel for Chiptar, the 25 February 2021 accountants' report, which was a review of the latest statement of cash of THC Rice for seven months for 1 July 2020 to 31 January 2021, was only prepared *after* the 3 November 2020 DCR and the notice of the second rights issue were issued. No explanation was proffered as to why the report which was obviously commissioned to support the second rights issue based on purportedly 'cash flow issues' only came into being *after* the decision to have the 2 November 2020 was not a cash flow analysis at all. It is difficult not to conclude that the 25 February 2021 accountants' report is nothing but an afterthought.

[144] Whilst it is a general principle that a shareholder participates in a company without the expectation that the shareholding ratios amongst shareholders would remain static and unchangeable, nevertheless, the proportional shareholdings among the shareholders should not be disturbed unless it can be demonstrated that the directors in the exercise of their powers to manage the business and operation of the company could not have accomplished the company's business objective as effectively by other means without altering the proportionate shareholding of the shareholders. This is all the more so in the present case where the shareholding proportions among the existing shareholders were of shareholdings were determined by the patriarch, TSL which had formed the basis of an expectation among the shareholders that the said percentages would not be altered.

[145] From the above, it is my judgment that similar to the first rights issue, the justifications offered by TTT, CFH and CNM for the second rights issue have not been established at all. In fact, the second rights issue coming just less than 6 months after the first rights issue, was to my mind, a continuing attempt by TTT, CFH and CNM to dilute Chiptar's shareholdings.

The third rights issue

[146] In fact, despite the 27 January 2021 interim injunction to restrain the second rights issue, the second to fourth defendants attempted to breach the same by way of the third rights issue.

[147] By the third rights issue, TTT, CFH and CNM sought to raise the exact amount in capital as that of the second rights issue viz value. Chiptar came to learn of this third rights issue by way of a THC Rice letter dated 17 August 2022 that was only received by Chiptar on 23 August 2022.

[148] By its solicitors' letter dated 25 August 2022, Chiptar protested against the proposed third rights issue on the grounds that: (i) the THC Rice letter dated 17 August 2022 contained no reasons or rationale towards the allotment

exercise; and (ii) that proceeding with the third rights issue appear to be in breach on the 27 January 2021 interim injunction.

[149] It was only because of Chiptar's protest against the third rights issue that the third rights issue was not proceeded with.

[150] Significantly, notwithstanding that the second rights issue and the third rights issue did not take place, THC Rice had continued its business without any hint that it cannot meet its expenses and or had faced cash flow difficulty. The much-hyped prognosis that THC Rice will face the prospect of winding up without fresh injection of capital never materialised.

IMPROPER PURPOSE OF FOURTH RIGHTS ISSUE

[151] In January 2023 and over the Chinese New Year period, TTT, CFH and CNM sought to carry out the fourth rights issue. This time they sought to raise RM7,348,483.90 through the allotment of 3,194,993 THC Rice shares valued at RM2.30 per share. Chiptar came to learn of this fourth rights issue by way of a THC Rice letter of offer dated 18 January 2023, that was only received by Chiptar on 26 January 2023.

[152] Chiptar was required to respond to the letter of offer dated 18 January 2023 by 5pm on 2 February 2023. The consequence of Chiptar not responding to the letter of offer dated 18 January 2023 would, by extension, result in the further dilution of Chiptar's shareholding in THC Rice.

[153] Chiptar again protested against the fourth rights issue because no reasons and rationale towards the allotment exercise were provided. In addition, the effect of the fourth rights issue will alter the *status quo* of parties that has been preserved by the 27 January 2021 interim injunction.

[154] In the circumstances, by its solicitors' letter dated 27 January 2023, Chiptar sought from TTT an undertaking that THC RIce will not proceed with the fourth rights issue pending disposal of the originating summons herein, for which oral hearing *post* written submissions filed has been scheduled on 24 February 2023.

[155] Instead, by letter dated 30 January 2023 from the solicitors for TTT, CFH and CNM, a THC Rice directors' circular resolution dated 18 January 2023 was enclosed thereto setting out the reasons or rationale for the fourth rights issue ('18 January 2023 DCR').

[156] The 18 January 2023 DCR refers to a 'statement of cash flows projection' which then refers to various appendices in support of the inform

ation contained therein. Notwithstanding that being the case, the statement of cash flows projection was not enclosed to the 18 January 2023 DCR.

[157] The statement of cash flows projection purportedly projects that THC Rice's cash and cash equivalents are anticipated to be reduced from RM6.9m to RM1.03m for the financial year ending 30 June 2023. Such a reduction is anticipated as monies had to be utilized to meet:

(a) Chiptar's demand for RM3,050,829.25 ('the demand') based on a judgment obtained by Chiptar against THC Rice vide Kuala Lumpur High Court Suit No WA-22NCC-364–08 of 2021 ('Suit 364'); and

(b) the costs of building a new weighbridge. This is in view of the fact that the weighbridge presently utilized by THC Rice for its business operations is situated on Chiptar's factory land. Given that Chiptar has been wound up and that its assets will be eventually liquidated, THC Rice intends to build a new weighbridge on its own factory land.

[158] Consequently, TTT, CFH and CNM insisted on proceeding with the fourth rights issue.

[159] As the statement of cash flow projection was not enclosed in the 18 January 2023 DCR, Chiptar was unable to verify the accuracy of the of the same and its accompanying appendices.

[160] On account of the aforesaid, Chiptar filed a notice of application under encl 136 herein for an urgent interim injunction against THC Rice in respect of the fourth rights issue. The application for interim injunction was accompanied with the following undertakings provided by the liquidator for Chiptar:

(a) that Chiptar will not enforce the demand; and

(b) that Chiptar will continue to allow THC Rice to use the weighbridge until further notice.

[161] An order in terms of encl 136 was granted by this court on 2 February 2023 upon the undertakings proffered by the liquidator for Chiptar ('the 2 February 2023 interim injunction').

[162] It is indeed difficult to appreciate TTT's, CFH's and CNM's action in calling for the fourth rights issue. Chiptar's demand is based on a judgment obtained by Chiptar against THC Rice in Suit 364. The judgment was based on a finding by this court that TTT had acted without authority as director of Chiptar in transferring a sum of RM3.7m to THC Rice. No appeal was filed against the judgment. It is incredulous that THC Rice is now proposing a

rights issue seeking Chiptar to subscribe in order to raise the funds to meet its obligation to pay Chiptar the judgment in Suit 364.

[163] As regards the weighbridge, no evidence has been placed before this court on the construction costs for the same. Neither is there any explanation proffered to show that THC Rice's cashflow is unable to support the cost of construction. Further, no evidence has been adduced to demonstrate that the existing trade facilities are unavailable to meet the expenses or that some other foRMof banking facilities could not be obtained by THC Rice.

[164] It seems to this court that a rights issue is immediately sought by TTT, CFH and CNM at every opportunity or excuse without any serious consideration or discussion as to the real necessity for the same. The mechanism of rights issue is frivolously and to my mind intentionally resorted to by TTT, CFH and CNM more as an instrument to threaten Chiptar with dilution of its shareholdings (given that Chiptar is now wound up) and not for any bona fide purpose. Their actions thus far prove a clear propensity and tendency to oppress Chiptar as long as Chiptar remains a shareholder of THC Rice.

[165] This is made abundantly clear when TTT, CFH and CNM insisted on proceeding with the fourth rights issue even after Chiptar gave its undertaking not to enforce no its judgment in Suit 364 and to permit THC Rice to continue using its weighbridge.

THE RELIEFS

[166] Under s 346(2) of the CA 2016, reliefs to Chiptar are granted on the basis that 'the court may make such order as the court thinks fit with the view to bringing to an end or remedying the matters complained of'. The approach to the grant of reliefs under s 346 to Chiptar is to be viewed in light of an analogy drawn in the Canadian case of *820099 Ontario Inc v Harold E Ballard Ltd* [1991] OJ No 266 p 47, last paragraph that 'the surgery [towards the grant of relief] *should be done with a scalpel, and not a battle axe*'.

[167] By the originating summons, Chiptar sought for the following reliefs:

(a) an order for the cancellation of shares that were issued pursuant to the first rights issue;

(b) an order that THC Rice's register of members is restored and/or rectified as if the first rights issue did not occur;

(c) an order restraining the second rights issue;

(d) an order that the second to fourth defendants purchase Chiptar's shareholding in THC Rice at a fair value and a premium to reflect Chiptar's majority shareholding; and

(e) in the alternative, that Chiptar purchases the minority shareholding in THC Rice with a discount on the basis of it being a minority block.

[168] The above reliefs were sought on the basis of what was ideal to Chiptar as at the date of the filing of the originating summons. However, much has happened since then. In particular, Chiptar is now in liquidation. The grant of the reliefs as prayed for may not be towards 'bringing to an end or remedying the matters complained of' especially if Chiptar were to be granted an order merely for the original shareholding to be restored.

[169] I agree with learned counsel for Chiptar that the appropriate reliefs that are granted are assessed as at the date of hearing of the originating summons herein. Any reliefs that are to be given is to be considered in the context of the reality and practicalities of the overall situation, past, present and future. Some guidance can be gained from the following cases:

(a) *Re Hailey Group Ltd* [1993] BCLC 459, p 473e:

> *There might be circumstances in which, despite the appointment of an administrative receiver (or administrator or liquidator) before the hearing of the petition, the court would feel it necessary to impose on respondents an obligation to purchase the petitioner's shares.* Such an order would, in my view, be appropriate where the unfairly prejudicial conduct had prevented the petitioner from selling his shares at a proper price prior to the onset of insolvency. That, however, is not the present case. There is no evidence that the petitioner had any intention to sell his shares: on the contrary the order he sought until after the appointment of the administrative receiver was for the purchase of shares held by the respondents.
>
> *Another exception might be the case where the substantive relief originally asked for, at a time when the company concerned was solvent, was for a purchase of the petitioner's shares by respondents. In that case it might reasonably be said that the petitioner should remain entitled to the relief he was entitled to at the outset, despite supervening insolvency.* That again is not the case here: a purchase order was not sought until the eleventh hour.

(b) *Grace v Biagioli* [2005] EWCA Civ 1222, para 73:

> [73] *Once unfair prejudice is established, the court is given a wide discretion as to the relief which should be granted. Although s 461(1) speaks in terms of relief being granted "in respect of the matters complained of, the court has to look at all the relevant circumstances in deciding what kind of order it is fair to make. It is not limited merely to reversing or putting right the immediate conduct which has justified the making of the order.* In Re Bird Precision Bellows [1986] Ch 658, [1985] 3 All ER 523 Oliver LJ described the appropriate remedy as one which

would 'put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company'. *The prospective nature of the jurisdiction is reflected in the fact that the court must assess the appropriateness of any particular remedy as at the date of the hearing and not at the date of presentation of the petition; and may even take into account conduct which has occurred between those two dates. The court is entitled to look at the reality and practicalities of the overall situation, past, present and future.*

[170] In the present case, given the relationship between the Ter family after TSL's passing, there is a need to be a clean break between Chiptar and TTT, CFH and CNM in respect of THC Rice. Authorities emphasising on a clean break is found in the following cases:

(a) *Re Elgindata Ltd (No 1)* [1991] BCLC 959 at p 1005 f-i:

> The petitioners' case has for the most part failed. Ought I none the less to order Mr Purslow, or Mr and Mrs Purslow, to purchase Mr and Mrs Rowland's shares? I have, after a great deal of hesitation, come to the conclusion that I should. The decisive factor to my mind is Mr Purslow's propensity for using the company's assets for his personal benefit and the benefit of his family and friends. *I accept Mr Nurse's submission that, having regard to the evidence about that, it would be unfair to Mr and Mrs Rowland for the court to leave them 'locked in' as minority shareholders in the company.* Mr Chivers, pointing to the great width of the court's discretion under s 461, and to the undesirability of using a sledge hammer to crack a nut, suggested that I might give directions or accept undertakings as to the future conduct of the company's affairs, to safeguard Mr and Mrs Rowland's interests in that respect. He did not, however, specify what foRMthose directions or undertakings might take and I can think of none that would be effective without being, from Mr and Mrs Rowland's point of view, inordinately costly and time consuming to police. *I think, to use an expression that is more familiar in the Family Division, that this is a case for a 'clean break.'*

(b) *Cheyne v Alfred Cheyne Engineering Ltd* [2021] CSOH 17, para 61:

> [61] In particular, I do not agree with the submission made on behalf of Balmoral that the default remedy is for the majority to purchase the minority's shares. *In my opinion, a buyout of the minority by the majority is an appropriate remedy* in many but not all circumstances (*O'Neill v Phillips; Re Brenfield Squash Racquets Club Ltd; Re A Company* (No 836 of 1995)). *In a situation where persons expect to remain as both a shareholder and a director, but the relationship between them has broken down and one is being excluded from being a director, the court will often order a clean break whereby the majority shareholder buys out the minority.* The advantage of such a solution is that the excluded person is not trapped in a situation where he has no access to the money which he has invested in shares and cannot control the use of it.

A BUY OUT ORDER

[171] Towards a clean break, and given that the liquidator of Chiptar has a duty to liquidate all of its assets, it is best that Chiptar is no longer a shareholder of THC Rice or connected to THC Rice any further.

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[172] I must state that it is rare for a court to make an order for a minority to buy out a majority shareholder's shares in an oppression action. This is because in almost all cases, the majority will be able to rely on its majority control to remedy the oppressive action perpetrated by the minority.

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[173] However, this is an exceptional case. Although Chiptar holds 80.93% shares in THC Rice, TTT in fact has effective control of Chiptar through his personal 40% shareholding in Chiptar. The remaining shareholders of Chiptar, namely, LYH, TWH and TCH have an aggregate of 36% shareholding only. The balance 24% shareholding which is registered in TSL's name now vests in TSL's estate and there is an on-going dispute over the rightful administrator to his estate. This means that TTT will be able to thwart any attempts by Chiptar to change the composition of the board of directors of THC Rice.

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[174] Furthermore, the alternative relief requiring Chiptar to buy over the minority shares in the present case when Chiptar is in liquidation will effectively lead to either the winding up of THC Rice since the liquidator would be looking at realising all assets of Chiptar or it will protract the liquidation process, if the liquidator were to sell the shares of THC Rice to a third party *post* the acquisition of the minority shares. In fact, rather than a sale to a third party, the preference ought to be for the present minority shareholder of THC Rice to purchase Chiptar's shares.

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G **[175]** Accordingly, an order against TTT, CFH and CNM to purchase Chiptar's shares in THC Rice at fair value is warranted. Authorities for the grant of purchase order at fair value can be found in the following cases:

(a) *Re Bird Precision Bellows* [1986] Ch 658, p 669 D-H:

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> For my part I find myself quite unable to accept this submission. *It seems to me that the whole framework of the section, and of such of the authorities as we have seen, which seem to me to support this, is to confer on the court a very wide discretion to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company; and I find myself quite unable to accept that that discretion in some way stops short when it comes to the terms of the order for purchase in the manner in which the price is to be assessed.* It has been pointed out, and I mention it again, that s 75(4) is merely a collection of possible methods of giving effect to s 75(3), and it is expressed to be without prejudice to the generality of subsection (3),

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which gives the court a very wide discretion as to the granting of relief in general terms in respect of the matters of which complaint has been made.

We have been referred to the speech of Lord Cross of Chelsea in *In re Westbourne Galleries Ltd* [1973] AC 360, 385, where he said in a very short passage, to which Mr Stubbs drew attention:

> *What the minority shareholder in cases of this sort really wants is not to have the company wound up - which may prove an unsatisfactory remedy — but to be paid a proper price for his shareholding.*

It is on the question of a 'proper' price that the parties here divide. So, Mr. Sparrow's second submission, which I have dealt with first, I find myself quite unable to accept. *In my judgment, the "proper" price is the price which the court in its discretion determines to be proper having regard to all the circumstances of the case.*

(b) *Re London School of Electronics Ltd* [1986] Ch 211 p 224 A-B:

> If there were to be such a thing as a general rule, I myself would think that the date of the order or the actual valuation would be more appropriate than the date of the presentation of the petition or the unfair prejudice. Prima facie an interest in a going concern ought to be valued at the date on which it is ordered to be purchased. *But whatever the general rule might be it seems very probable that the overriding requirement that the valuation should be fair on the facts of the particular case would, by exceptions, reduce it to no rule at all …*

PREMIUM FOR MAJORITY SHARES

[176] Learned counsel for Chiptar urged this court to include a premium in assessing the fair value of Chiptar's shareholding in THC Rice on account that Chiptar held a majority block in THC Rice at 80.93% citing in support the following authorities:

(a) *CVC Demarco v Almeida* [2002] BCC 684:

> 39. If the going concern value is adopted, a further question arises: whether a discount should be applied to reflect the fact that the holding is a minority one. *An outsider would normally be unwilling to pay a significant price for a minority holding in a private company, and a fair price as between a willing seller and a willing purchaser might be expected to reflect this fact.* It would seem to be unreasonable for the seller to demand a higher price from an unwilling purchaser than he could obtain from a willing one. Small private companies commonly have articles which restrict the transfer of shares by requiring a shareholder who is desirous of disposing of his shares to offer them first to the other shareholders at a price fixed by the company's auditors. *It is the common practice of auditors in such circumstances to value the shares as between a willing seller and a willing buyer and to apply a substantial discount to reflect the fact that the shares represent a minority holding.*

(b) *Khong Kok Yun & 6 Ors v Ong Soon Kwee & 3 Ors* (Court of Appeal,

Malaysia, unreported), p 42, para [2]:

> ... After the valuation report is completed the Petitioners shall purchase the shares of the third and fourth respondents at a discount of 25% of the price determined by the valuer in the valuation report. I am making the order in such a way because I take into consideration that the evidence in this case shows that the conduct of the majority had been unfair prejudicial to the interest of the minority shareholder.

[177] The aforesaid cases concern the principle that a discount is imposed on the purchase price of the minority's shares to reflect that the shares represent only a minority holding. However, the more recent trend has been that the courts in making an order for the majority to buy out the minority in an oppression action, *no* discount shall be deducted from the fair value on the ground that the sale of the minority shareholder's shares was a consequence of the oppressive act(s) of the majority. The sale is not one between a truly willing seller and a willing buyer.

[178] Although as a matter of logic, it seems fair that just as no discount is usually ordered when a majority shareholder is ordered to buy out a minority shareholder's shares, similarly so as not to benefit the oppressor, a premium on the purchase price ought to be paid in the converse case ie where the minority shareholder is ordered to buy out the majority shareholders' shares.

[179] However, I am not inclined to include any premium in the valuation price for Chiptar's shares in this case.

[180] This is because the remedy of a buy out by the minority from the majority in this case is an option expressly preferred by Chiptar given the present status of the company which is in liquidation. Further, as alluded to above, the alternative order requiring Chiptar to purchase the minority shareholder's shares of RHC Rice will effectively result in the winding up of THC Rice. Also, based on the facts of this case, to impose a premium on the valuation price on the minority may unnecessarily place too heavy a financial burden on the minority to purchase the majority's shares.

METHOD OF VALUATION

[181] Given that THC Rice is still operating at a profit, I accept the submission by learned counsel for Chiptar that the mode of valuation should be on a 'going concern' basis. In other words, it means that THC Rice is valued on the assumption of its earnings in the years to come.

[182] Authorities in support of a valuation method on a 'going concern' basis is found in the following cases:

(a) *Buckingham v Frances* [1986] 2 All ER 738, p 739f:

> (2) It is the value of the company as a going concern which must be assessed, not the break-up value of its assets in a liquidation. However, the break-up value can be used as a longstop, if the value as a going concern was less.

(b) *CVC Demarco v Almeida* [2002] BCC 684:

> 37. There are essentially three possible bases on which a minority holding of shares in an unquoted company can be valued. In descending order these are: (i) as a rateable proportion of the total value of the company as a going concern without any discount for the fact that the holding in question is a minority holding; (ii) as before but with such a discount; and (iii) as a rateable proportion of the net assets of the company at their break up or liquidation value.

[183] A convenient point of the date of valuation will be as at 8 June 2020, a date immediately preceding the first rights issue and TTT's withdrawal of monies from THC Rice. By taking the fair value as at 8 June 2020, it will in effect discount the oppressive acts viz the first rights issue onwards.

[184] In determining what is to be the fair value, this court will of course need to be assisted by an independent expert valuer to provide an opinion as to what fair value of Chiptar's shareholding in THC Rice is as at 8 June 2020. Thus, unless otherwise agreed between the parties, both Chiptar and THC Rice are to provide this court within 30 days of the date of the grant of the order herein their respective proposed independent expert valuer(s) and their respective fees for this court to appoint an independent expert valuer to provide an opinion on the fair value of Chiptar's 80.93 % shares in THC Rice as at 8 June 2020 on an 'on going' business basis without any premium for its majority holding.

DISCHARGE OF CHERAS BUNGALOW/ CORPORATE GUARANTEE(S)

[185] Quite apart from a buy out order, counsel for Chiptar has also sought an order for one of Chiptar's properties ie a two storey-bungalow in Cheras with an address at No 16, Jalan Jintan Manis, Taman Supreme, Jalan Cheras, 56100 Kuala Lumpur ('Cheras bungalow') that has been furnished as security towards a RM10m loan facility from Agrobank Bhd to THC Rice to be released.

[186] Counsel for both parties have also informed this court that Chiptar has also provided its corporate guarantee(s) to the bank facilities granted to THC Rice. Such guarantees will also have to be dealt with to achieve a clean break.

[187] Section 346(2) of the CA 2016 is wide enough for the court to make the orders sought. The circumstances of the case justify the making of such an

order as Chiptar has been wound up and the Liquidator is duty bound to realise all properties of the company for the eventual distribution of the surplus, if any, to the shareholders. Further, once an order is made for Chiptar's shares to be bought out, there is no commercial reason for its properties to be made as collaterals to any bank facilities secured by THC Rice or for Chiptar to provide its guarantees for the same.

[188] However, a reasonable time period must be allowed for THC Rice to find alternative collaterals for the facilities granted by THC Rice's financial lenders.

EXEMPLARY DAMAGES

[189] Quite apart from the aforesaid, learned counsel for Chiptar also urged this court to make an order for exemplary damages against TTT and CFH. It is contended that TTT's conduct in particular in the present case was so egregious and reprehensible that an order of exemplary damages will send a strong signal to others that the courts will not tolerate such blatant and improper abuse of power under s 75 of the CA 2016.

[190] It is not clear that in a case of oppression, the court has the power to order the payment of exemplary damages against the parties perpetrating the oppressive acts. However, I am spared of having to make a determination on the same as I do not think that the present case falls within the two categories in common law where exemplary damages may be awarded as enunciated in *Rookes v Barnard* [1964] 1 All ER 367, in any event.

CONCLUSION

[191] Thus, for the reasons stated above, this court makes the following orders:

(a) a declaration that the second and third defendants, jointly and severally, have conducted the affairs of the first defendant in a manner that is oppressive and in disregard of the plaintiffs interest as a member of the first defendant by causing the issuance of 8,043,478 shares of the first defendant to the second defendant;

(b) a declaration that the second to fourth defendants, jointly and severally, have conducted the affairs of the first defendant in a manner that is oppressive and in disregard to the plaintiffs interest as a member of the first defendant in seeking to cause the issuance of 3,012,422 shares of the first defendant;

(c) an order that shares that were issued pursuant to the first rights issue be cancelled and that THC Rice's register of members is restored and/or rectified as if the first rights issue did not occur;

(d) an order that the second to fourth defendants, whether jointly or severally, purchase 2,023,214 of the plaintiff's shares in the first defendant at a price to be mutually agreed upon within 14 days from the date of this order, failing which, at a fair value as at 8 June 2020, to be determined by this court and that the second to fourth defendants, whether jointly or severally, do purchase 2,023,214 of Chiptar's shares in THC Rice within 90 days of the determination of fair value unless otherwise extended by this court, failing which it is ordered that the first defendant be wound up;

(e) in determining the fair value, this court shall be assisted by a valuation report prepared by an independent expert valuer who shall assess the fair value of the plaintiffs 2,023,214 shares in THC Rice as at 8 June 2020 on a 'on going' business basis and without ascribing any premium for the majority holding;

(f) unless otherwise agreed between the parties, the plaintiff and the second to fourth defendants shall within 30 days of the date of this order submit to this court their respective proposed independent expert valuers with their proposed fees and the court shall appoint the independent expert valuer from the proposed names submitted;

(g) that the plaintiff and the second to fourth defendants may make representations to the independent expert valuer appointed by the court towards assessing the said fair value;

(h) that the independent expert valuer appointed by the court shall serve a copy of the valuation report to the respective solicitors of the plaintiff and the second to fourth defendants within three months of the date of his appointment or any extensions thereof by the court;

(i) that the costs of the independent expert valuer appointed by the court for the valuation shall be borne and paid by the first defendant;

(j) the plaintiff shall file the valuation report on the independent expert valuer's behalf and further move an application herein towards determination of the fair value of the plaintiff's 2,023,214 shares by the second to fourth defendants;

(k) an order against the second to fourth defendants to procure and/or cause to fully release any and all of Chiptar's properties, including but not limited to the Cheras bungalow and any or all of Chiptar's corporate guarantees as securities for all of THC Rice's unsatisfied financial obligations within three months from the date of this order;

A (l) costs of RM100,000 to be paid to the plaintiff by the second to fourth defendants, on a joint and several basis and subject to payment of allocator; and

(m) that parties are at liberty to apply.

B *Order accordingly.*

Reported by Dzulqarnain Ab Fatar

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